

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TROOPER 1, : 22-CV-00893 (LDH) (TAM)

Plaintiff,

-against-

: United States Courthouse
: Brooklyn, New York

: September 26, 2023
: 11:00 a.m.

NEW YORK STATE POLICE, et
al.,

Defendants.

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ANDREW CUOMO,

: 23-MC-1587 (LDH) (TAM)

Plaintiff,

-against-

Defendants.

LINDSEY BOYLAN,

- - - - - X

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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Proceedings

4

1 THE COURTROOM DEPUTY: All rise.

2 THE COURT: Good morning, everybody. You may be
3 seated.

4 THE COURTROOM DEPUTY: This is civil cause for a
5 status conference, docket 22-CV-893, Trooper 1 versus New York
6 State Police, et al., and docket 23-MC-1587, Cuomo versus
7 Boylan.

8 Will the parties please state their appearances for
9 the record, starting with the plaintiff.

10 MR. LICUL: Good morning, Your Honor. Valdi Licul,
11 Wigdor, LLP for Trooper 1.

12 MR. CRAIN: Good morning, Your Honor. John Crain
13 Wigdor, LLP for Trooper 1.

14 MS. PERRY: Danya Perry from Perry Law for nonparty
15 Lindsey Boylan. With me is my colleague Doug Quzack from my
16 office.

17 MS. GLAVIN: Good morning, Your Honor. Rita Glavin,
18 along with my colleagues Leo Korman and Katherine Petrino. We
19 are with Glavin, PLLC and we represent the former Governor
20 Andrew Cuomo.

21 MS. TRZASKOMA: Good morning, Your Honor. Theresa
22 Trzaskoma from Sher Tremonte, LLP, also on behalf of Governor
23 Cuomo, and my colleague Allegra Noonan is also here. Thank
24 you.

25 MS. FOTI: Good morning, Your Honor. Catherine Foti

Proceedings

5

1 from the firm Morvillo Abramowitz Grand Iason & Anello,
2 appearing with my colleagues Joseph Stern and Kayasha Lyons.
3 We represent Melissa DeRosa and Richard Azzopardi.

4 MR. PALERMO: Good morning, Your Honor. Daniel
5 Palermo from Harris Beach, PLLC, on behalf of the New York
6 State Police.

7 THE COURT: Okay. Good morning.

8 And it's also my understanding that we have counsel
9 for additional interested parties present. I'm see some of
10 them nodding. My courtroom deputy took your names. I will
11 turning to the interested parties after I address the main
12 parties in the case. So thank you all for being here.

13 As everybody knows, we are here today for a
14 discovery conference, as all who are involved in this
15 discovery process know, there are a number of pending motions
16 and complex issues at stake. By last count, there were
17 something like 25 pending motions across three dockets. It
18 might be more, because I think some were filed on Friday and
19 over the weekend.

20 Governor Cuomo, in a letter, recently characterized
21 the discovery situation in this case as a quagmire. Sadly,
22 that characterization is pretty close to the mark. There are
23 many issues at stake in this discovery process that have
24 extremely important ramifications for the integrity of our
25 governments, the integrity of investigations conducted by the

Proceedings

6

1 State legislature, and the Attorney General's Office, and for
2 the complainants that came forward in those investigations.

3 Through the civil discovery in this case, Governor
4 Cuomo seeks a wide swath of discovery materials that were
5 generated in the course of those official Government
6 investigations into his conduct and in the discovery process
7 in this case, which is brought by a single plaintiff, is this
8 the correct forum to attempt to recreate that widespread
9 investigation? The answer to that is no. On the current
10 record, Governor Cuomo appears to be attempting to defend
11 against or attack the entirety of investigation conducted by
12 the Attorney General and the Assembly Judiciary Committee.

13 As I noted before, this strategy has very
14 significant implications for the complainants in the case,
15 many of whom are here.

16 Part of the problem, as I see it, rests with the
17 plaintiff in this case. The parties and Trooper 1 and
18 Governor Cuomo have not meaningfully met and confer in an
19 effort to narrow what the discovery process should be in this
20 case. They also have not, in my judgement, meaningfully met
21 and conferred prior to filing many of the motions that have
22 been filed in this case in direct contravention of my
23 individual rules. This has to stop.

24 The record as presently developed provides no clear
25 boundary to the information from the investigative reports

Proceedings

7

1 Trooper 1 seems to be seeking to introduce. So, first, I want
2 to address with the parties the parameters of the anticipated
3 proof in the Trooper 1 case because this is critical to the
4 Court's evaluation of relevance overall and this is what has
5 been lacking from the conversation and from the briefing.

6 Another thing that is notably lacking from the
7 briefing is time-back discovery requests made by Governor
8 Cuomo to Trooper 1 and that is the deficiency I have seen
9 repeatedly in the defendant's papers. Many of the papers are
10 speaking about the Attorney General's report in general
11 without specifically tying it to this case, and that needs to
12 stop as well.

13 So, first, I would like to hear from you, Mr. Licul,
14 as to which witnesses were included in your Rule 26(a)1
15 statement and how do you anticipate proving your case?

16 MR. LICUL: Your Honor, thank you for the
17 opportunity. We included all of the victims who are mentioned
18 in the AG's report and in the Assembly report and that's based
19 upon Black letter Second Circuit law that says that in a
20 hostile work environment case, the jury must hear the entirety
21 of the evidence, including the perpetrator's harassment of
22 other victims. And that's the Perry case and that's the Cruz
23 case, and we are entitled to do that.

24 Your Honor, I understand that that means that there
25 are quite a number of victims here, but that is not

Proceedings

8

1 Trooper 1's one fault. That is the fault of the Governor and
2 his conduct, and it would be wholly improper and unfair to
3 require Trooper 1 to litigate this case with the Governor
4 saying well, these were just petty slights and minor
5 inconveniences when his conduct was repeated over and over and
6 over again with other women who also took exception.

7 Trooper 1 is entitled to a fair trial. As is the
8 Governor, but she's entitled to present that evidence of the
9 other victims in this case.

10 And, Your Honor, discovery is not yet complete. I
11 understand that. But what that strategy will be specifically
12 after the litigation, I think is for another day.

13 I do want to mention one thing, Your Honor, about
14 Your Honor's comment about us not narrowing. And, Your Honor,
15 respectfully, I think that we have done everything. We are
16 virtually complete on our end with discovery. We just need
17 the Governor's deposition, and he refuses to be deposed.

18 We offered the defendants Trooper 1's deposition.
19 They cancelled it the day before. So it's not that Trooper 1
20 is hiding anything.

21 There is no motion before this Court by any of the
22 defendants that Trooper 1 has not produced any documents, that
23 she has somehow shirked her responsibilities. That's not
24 before the court, no one has accused us of that.

25 And, so, Your Honor I think that -- and where we've

Proceedings

9

1 had the opportunity to discuss narrowing, in each instance --
2 we only have three motions pending out of the 25 or so that
3 are here. We only have three: One is to demand that the
4 Governor sit for his deposition. He is a defendant. He can't
5 not sit for his deposition; and two, that he do that before we
6 inconvenience the nonparties. That's what we're asking for.

7 And to the extent that the Governor seeks to
8 subpoena, you know, who someone slept with or prior sexual
9 history or the phone records of a witness' daughter, his
10 deposition should come first, and he should learn what Trooper
11 1 has to say. He cannot go directly to say -- to issuing 50
12 subpoenas or so. I'm using that -- it's probably close to
13 that, but numerous subpoenas without complying with his own
14 obligations.

15 At each step, we have met and conferred. We have
16 discussed, and we have resolved, and there were issues that
17 they had with our production. We resolved each and every one
18 of them.

19 There were issues with the Governor conveniently
20 losing his phone in the Atlantic Ocean at one point. He lost
21 it in August of 2021 just as discovery was beginning. We
22 didn't make a motion. We resolved the issue by trying to get
23 the information in a different way.

24 So I think I have gone beyond what the Court's
25 specific question was. But I do think that we have, in every

Proceedings

10

1 instance, narrowed this, tried avoid inconveniencing
2 nonparties and tried to get the discovery here resolved. And
3 we're prepared to resolve it by the 16th, which is the
4 currently deadline.

5 THE COURT: That clearly is not going to be the end
6 of that discovery given where we are.

7 But, Mr. Licul, you've represented that you've
8 included all the complainants in the reports, in your Rule
9 26(a)1 disclosures on the reliance on the theory that as a
10 hostile work environment case the instances it happened with
11 others may come in. This is not the first time we have
12 discussed *Perry* in the context of this litigation. There has
13 been argument on the other side that her work environment,
14 Trooper 1's work environment was different than the people who
15 worked directly in the executive chamber. She worked for the
16 New York State Police. She was on the PSU and it was a
17 different situation for her than some of the other
18 complainants who came forward. And is this something we need
19 to resolve now in the discovery process before they seek to
20 depose eight or ten people as to whether or not the
21 information pertaining to these other complainants is likely
22 to be sufficiently analogous as to overcome 404(b) and Rule
23 403.

24 MR. LICUL: I don't think so, Your Honor, because
25 the environment is the environment around the Governor,

Proceedings

11

1 whether somebody works for the State police, whether a woman
2 works for the PR department, whether she is a secretary, an
3 administrative assistant, whether she works for some other
4 State agency, the fact is that the environment we are talking
5 about is some level of circular sort of geographic and sort of
6 scope around the Governor. How did he treat women who worked
7 around him?

8 The fact that somebody was there to protect him,
9 like Trooper 1, doesn't mean that his harassment of her is
10 different than his harassment of, say, somebody who works as a
11 briefer.

12 THE COURT: Mr. Licul, by that analogy, how he
13 treats the woman around him, would the Governor then be
14 entitled to parade in all of the women who have said they
15 suffered no harassment to show how he treated the women around
16 him?

17 MR. LICUL: I think that has limited utility, Your
18 Honor, because the case law is clear: Just because don't
19 harass everyone, doesn't mean you didn't harass the victim.
20 It's the equivalent of a murder defendant saying I'd like to
21 introduce the people that I didn't kill, right. I mean, that
22 is not relevant in this case.

23 THE COURT: Well, by your theory of relevance,
24 you're saying that the environment is the environment setting
25 sort of a perimeter around the Governor, right. If he has

Proceedings

12

1 essential right-hand people, which he did, who are female, who
2 are not mistreated, you know, how do you overcome that Rule
3 404(b), Rule 403 analysis and say you can do it but they
4 can't?

5 MR. LICUL: I'm not necessarily saying that, Your
6 Honor. I just don't think that's for today.

7 The Governor is not trying to depose people who are
8 going to exonerate him. What he's trying to do here with
9 these 50 subpoenas or so is go after the people who had
10 adverse information.

11 THE COURT: Right. But by your theory of relevance,
12 you would be hard-pressed to oppose their depositions.

13 MR. LICUL: They haven't asked for any and we
14 haven't. So I guess --

15 THE COURT: They subpoenaed many people for
16 deposition who were complainants in those reports.

17 MR. LICUL: No, no. I'm sorry, Your Honor. I may
18 have misunderstood.

19 I meant if he wanted to subpoena somebody who's
20 going to say the Governor was wonderful, he never harassed me.
21 I don't know of such subpoena. And to the extent one exists,
22 we haven't opposed.

23 THE COURT: Right. But do you opposed, based on
24 your theory of relevance, you filed a motion to quash in part
25 on behalf of Ms. Boylan, right?

Proceedings

13

1 MR. LICUL: Yes.

2 THE COURT: So how do you say they can't take
3 discovery as to Ms. Boylan under your theory of relevance?

4 MR. LICUL: Our motion of Ms. Boylan is limited.

5 THE COURT: It's only as to those documentary
6 evidence in the third-party subpoenas to --

7 MR. LICUL: Right. It is the Rule 412 analysis.

8 THE COURT: So you're not objecting to the
9 depositions? That's what I'm trying to clarify.

10 MR. LICUL: We're not objecting to the depositions.
11 Obviously, we will defer to those witnesses who have
12 additional objections. But we are objecting to the deposition
13 and the document request to the extent they seek prior sexual
14 history. That's the scope. That's the extent to which we are
15 joining in those two motions.

16 But other than that, our other two motions are to
17 have the Governor be deposed and to basically have that happen
18 first before he can do nonparty discovery and make him stop
19 intimidating witnesses. I mean, there is a pretty healthy
20 record of some pretty disturbing behavior that started before
21 this case during the investigation and continues through June
22 of this year. I mean, the most recent letter by Ms. Hinton
23 alleges that Cuomo directly threatened to release dirt that
24 her children would not want out there. And I'm not saying
25 that she used the word dirt. That's my paraphrasing of it.

Proceedings

14

1 But that's the gist of it.

2 And, Your Honor, I think there is a solution to
3 this.

4 Early on in this case we had an issue about what we
5 could do or what the scope of discovery was with respect to
6 Mr. -- as a party and Ms. DeRosa, both of whom are subject to
7 a motion to dismiss that is still pending. And I think Your
8 Honor had a solution, which has worked out well. They would
9 produce to us any documents that they produced to the AG as
10 part of the investigation, and to the extent more information
11 was needed, we would meet and confer on specific pieces of
12 information. That worked out well. We've completed our
13 discovery, essentially, of those two parties in this case.
14 The nonparties should not be treated any differently. They're
15 sort of witnesses to the accident.

16 So, to the extent anyone should be burdened, it
17 should be the parties here.

18 Cuomo should be deposed. And we think that it's a
19 pest solution to this problem. I understand that many of
20 these witnesses have, in fact, already produced to the
21 Governor what they produced to the AG's Office. And to the
22 extent there's something specific, the parties can meet and
23 confer. But subpoenaing their phone records, husband's phone
24 records, daughter's phone records, school records, that's well
25 beyond the pale.

Proceedings

15

1 THE COURT: So you suggest a similar solution to the
2 one that we reached, the accommodation we reached as a party
3 undergoes, and that's proving workable based on the discovery
4 to date?

5 MR. LICUL: There has been no motion practice
6 regarding that.

7 THE COURT: That's true.

8 MR. LICUL: So the proof is in the pudding, I
9 suppose.

10 But, yes, that's a perfectly sensible solution to
11 this.

12 THE COURT: So you would anticipate these
13 depositions going forward as to the additional complainants?

14 MR. LICUL: Your Honor, I think at some point there
15 is an overkill factor. We already know what these folks have
16 said.

17 THE COURT: They're planning to call them. They
18 have a right.

19 MR. LICUL: But this case is sui generis to the
20 extent they already have their testimony.

21 THE COURT: In part --

22 MR. LICUL: Well, understood --

23 THE COURT: -- due to the other issues, which is
24 scheduled for noon today with the Attorney General's Office.

25 MR. LICUL: Well -- but the problem here, Your

Proceedings

16

1 Honor is -- we're not opposing any of those depositions.
2 Those other witnesses may have specific objections related to
3 that, for example, I think there's one witness who tried to --
4 who agreed to be deposed for two or three hours, which seems
5 like a perfectly sensible solution. They already have the
6 testimony. You'd have to fill in the gaps, as Your Honor
7 said, on these other issues. But we're not opposing that as a
8 rule. It goes above the 10-deposition rule.

9 THE COURT: Right.

10 MR. LICUL: And I know we understood from the
11 beginning that there would be some play in that rule. I think
12 at some point it becomes overkill.

13 THE COURT: Well, but not if you're not willing to
14 limit your case. That is the dilemma that the Court is
15 facing. The Court is facing a dilemma of respecting
16 plaintiff's ability to try to tell the case within the bounds
17 of the law -- *Old Chief*, my favorite case of all time -- and
18 really develop the record that you need to present the case as
19 you see fit to the jury. But if that is the plan, then
20 Governor Cuomo shouldn't be entitled to an opportunity to
21 contest whether or not that information comes in at all, and
22 in order to do that, needs to develop some additional
23 information as to relevance. And if those complainants do end
24 up on the stand, having taken the deposition is obviously
25 their preference.

Proceedings

17

1 MR. LICUL: But that is 11 women, including Trooper 1.

2 THE COURT: I'm aware.

3 MR. LICUL: It's not the dozens or so that have been
4 either subpoenaed for documents or where there has been a
5 request for their depositions. It's well beyond that.

6 THE COURT: Okay. Fair enough. All right. Is
7 there anything else you would like to add?

8 MR. LICUL: No, Your Honor, just that to the extent
9 Your Honor has already -- hinted is the wrong word, but is
10 inclined to extend the discovery deadline, we want a firm
11 deadline and we would like it to be as soon as possible.

12 THE COURT: Of course. Thank you. I understand.

13 All right. Ms. Glavin, obviously there are many
14 issues on the table. I'm curious at some point to hear your
15 take on Mr. Licul's suggestion that we take a similar approach
16 to what we took as a party in DeRosa because, as you yourself
17 have described, or maybe it was Ms. Trzaskoma -- I don't know
18 who the signatory was in the letter. I assume it was joint
19 work product. The discovery in this case is a mess and we are
20 trying to get done.

21 So what do you think we can do practically speaking,
22 and, of course, inform by our legal landscape?

23 MS. GLAVIN: Judge, look, the first question that I
24 was going to pose when we started today is the one that he
25 posed, and I was going to say to plaintiff's counsel if they

Proceedings

18

1 drop these other 10 complainants which comprise some 73
2 paragraphs, more than that, of the Complaint, then this is
3 very simple and everybody sitting in the gallery can go home
4 if this is about the Trooper 1 lawsuit which, of course,
5 that's what we would prefer.

6 And, so, the reality we are facing -- and I want to
7 address -- there were three points, because I think the record
8 needs to be corrected. Governor Cuomo by no means is refusing
9 to sit for his deposition. In fact, was ready, willing, and
10 able to sit for his deposition. We scheduled it for August
11 23rd. Because we were not getting the documents that we
12 needed, because none of the complainants were producing
13 anything more, except for a couple, than what had been
14 produced to -- they had already produced to the Attorney
15 General's Office, we were simply not able to go forward. We
16 were also getting new information from other depositions and
17 in particular, a former member of the PSU detail.

18 Because of the information that we were getting, we
19 said to plaintiff's counsel, look we need to push the
20 deposition. It can't go forward. We also have all of these
21 pending motions. We have not gotten documents we need,
22 including from State Government entities, such as the
23 executive chamber, how about September 27th? That was the
24 date that we offered Mr. Licul, and he summarily rejected it
25 and said that doesn't work for us, and we want to go ahead on

Proceedings

19

1 the 23rd. The Governor is going to sit for his deposition,
2 but the reality is what is the scope of this case going to be,
3 and is he going to sit for his deposition and be questioned
4 about 10 other women, some of whom he didn't even know they
5 were making allegations when he was deposed two years ago
6 during that deposition and we have to prep him for that.

7 So what we have said to Mr. Licul is to the extent
8 you are including all of this in the case -- and we don't have
9 an evidentiary, you know, boundary to this. We may. I
10 strongly suspect we are going to be making a motion, but we
11 need more information about the other allegations to do that.
12 But if Mr. Licul is proposing let's just do discovery on
13 Trooper 1's core allegations as they relate to her, then yes,
14 if you want to do part one and part two. But the Governor is
15 not going to sit for a deposition and be questioned about
16 allegations by 10 other women, many of whom we have not been
17 able to fully explore. We have transcripts that got publicly
18 released that are heavily redacted.

19 THE COURT: I wouldn't say heavily. I don't agree
20 with that characterization.

21 MS. GLAVIN: On a few of them there are large
22 swathes that are unredacted that talk about other people and
23 whose identities that we don't know what they're talking about
24 and they are important to our case. So when you say large
25 swathes, maybe no, it's not 20 percent or 10 percent are

Proceedings

20

1 redacted. But they're talking about specific people, specific
2 witnesses and staffers and those names are blacked out.

3 We've already taken one deposition, and this is in
4 our paper, Ms. Liss-Jackson, and we went through some of the
5 names and she couldn't remember what she had said earlier.

6 I do -- I want to get back to relevance, but there
7 were just a couple of other points with respect to Mr. Licul:
8 One is Governor Cuomo is not refusing to sit for the
9 deposition. Mr. Licul knows that.

10 With respect to Trooper 1's deposition, I want to
11 explain why we put off her deposition. Two days before
12 Trooper 1 was to be deposed, we took the deposition testimony
13 of a former colleague of hers in the PSU Diane Perrotta. On
14 the eve of her testimony, we were provided with text messages
15 that Diane Perrotta had with Trooper 1 discussing what it is
16 that Trooper 1 wanted Diane Perrotta to testify to. And Mr.
17 Licul talks about well, you know, you're subpoenaing kids'
18 phones, her husband's phone. Diane Perrotta used her
19 husband's telephone.

20 THE COURT: I understood from the papers is that her
21 son?

22 MS. GLAVIN: Her daughter and her husband. She
23 doesn't have a son --

24 THE COURT: A child.

25 MS. GLAVIN: It's her daughter and her husband, to

1 get in touch with Trooper 1 so that there wouldn't be a record
2 of it, and that is what caused us to get the phone records.
3 We were very concerned about these communications happening
4 when Diane Perrotta had been subpoenaed and in the weeks
5 before the deposition. So that's why those phone records
6 subpoenas went out. It was for a proper purpose, not meant to
7 harass. It was what are the extent of these communications.
8 So we pushed off the deposition with consent of all counsel in
9 the case, State Police and with counsel for Ms. DeRosa and Ms.
10 Azzopardi because we had a reason.

11 The second is that we had gotten Trooper 1's medical
12 records only a couple weeks before and they were, you know,
13 somewhat voluminous going through, but given that state of
14 affairs, we knew that there were other troopers that we were
15 going to have to subpoena, that we wanted their depositions
16 before Trooper 1's. So I don't want the Court to think that
17 we were canceling depositions.

18 I can tell you I got a very lengthy outline already
19 prepared for Trooper 1's deposition. That changed drastically
20 after Diane Perrotta's deposition.

21 The third thing I want to address with respect to
22 plaintiff counsel discussing the Governor's cell phone, let's
23 just be clear, Governor Cuomo has had three phones that were
24 imaged. Thousands of images have been produced, okay, to
25 Trooper 1 in this case that were responsive: Two Blackberries

1 and an iPhone.

2 What has been interesting to us is that we have not
3 received a single text message that Trooper 1 has had that
4 would be discussing the Governor, the case, the allegations,
5 other than the text messages that got produced on the eve of
6 Diane Perrotta's deposition where she is reaching out to
7 Trooper 1 saying, to the effect, I know you have been
8 brainwashed, tell me what to say, why are your lawyers
9 reaching out to us? There's a series of maybe three text
10 exchanges. And the representation we've got, when talking
11 about ESI, from plaintiff's counsel is Trooper 1 simply didn't
12 have electronic communications throughout the whole course of
13 this. We'll explore that in the deposition.

14 But to be clear, we have produced I think 55,000
15 pages of documents, thousands of images from the Governor's
16 phones, and so I don't want the Court to think that in any way
17 -- not only have we not shirked the discovery obligations,
18 that we have gone back and actually re-reviewed images to make
19 sure that we're getting everything that's responsive.

20 On the issue of relevance and what the Court's --
21 what Your Honor said when you came out on the bench about the
22 AG report, to the extent that is the impression the Court has,
23 that we are somehow trying to re-litigate this, Judge,
24 honestly, at this point in time, I don't care about the AG
25 report. I just want to get the discovery that we need so that

1 we are -- can prepare a case and whether it includes 73
2 paragraphs.

3 I mean, Lindsey Boylan, her name comes up 36 times
4 in this Complaint. She's referenced in 26 paragraphs. There
5 are documents that we need from Ms. Boylan that we know
6 exists.

7 The AG report, you know, with respect to -- and
8 I'll give you an example, with respect -- and we'll deal with
9 this with Ms. Boylan, but quite frankly, we need to take our
10 own discovery. We are not trying to recreate the AG report
11 for a whole host of reasons, which I think you know that I
12 feel about the AG report. We're not trying to recreate it.
13 We are trying to defend.

14 THE COURT: At the prior or argument, there was a
15 lengthy discussion about to needing to reduplicate the AG
16 Office investigation, to be fair.

17 MS. GLAVIN: No. But the reason that happened, and I
18 want to go back to that argument, both the Assembly Judiciary
19 Committee and the Attorney General at that argument repeatedly
20 told us to do it ourselves. They said subpoena the women,
21 take their depositions, subpoena them for documents, do it
22 yourself, and that's exactly what we have been doing since we
23 had that argument. And the Court recommended that we do that.
24 And that's what we've been doing. And what has happened is
25 the morass that we are in now because no one wants to produce

1 anything, and no one wants to sit for a deposition. And so
2 the question that I keep posing and -- is what is the
3 relevance, because once we did, after the February conference,
4 to do our own investigation, to test the veracity allegations
5 and to prepare our defense is we got accused and continue to
6 get accused of harassment, retaliation. I think maybe the
7 favorite accusation -- not the favorite, but the most
8 disappointing to me personally was that Ms. Trzaskoma and I
9 were churning because we get to bill by the hours.

10 All we're trying to do here is what we do in every
11 case, whether I do it as a criminal defense lawyer or civil
12 lawyer, I need to be able to defend my client, and right now
13 we don't and have a tenth of what we need if the case is this
14 multi-hydra-headed with ten other people. I would prefer it
15 just be Trooper 1.

16 Here's where we are with discovery: There have been
17 -- Trooper 1 has taken six depositions. We have taken three.
18 We have had one complainant, and we have taken two troopers.
19 The one deposition we took of the complainant, which I think
20 goes to the importance of why we need to take the testimony of
21 all of the women in this case is that complainant, in her
22 testimony, not only repeatedly said that she was not sexually
23 harassed --

24 THE COURT: Her legal conclusion is irrelevant.

25 MS. GLAVIN: It's irrelevant, but she also said

1 repeated the Governor didn't touch her inappropriately. It's
2 what a reasonable person would perceive. She said the
3 Governor didn't touch her inappropriately, that a lot of what
4 she said to the Attorney General's Office was not based on
5 personal knowledge, it was based on hearsay. We need to get
6 into those details.

7 She also said that when we received our subpoena she
8 actually did believe that it was a reckoning because she
9 became somewhat uncomfortable as to how her allegations had
10 taken on a life of their own. And that is precisely why we
11 need to take these depositions, because after taking Ana
12 Liss-Jackson's deposition, there is no doubt in my mind that
13 if we do a motion to strike, she won't be part of this case.
14 And so that became the importance of that. But that's the
15 only one.

16 What we also learned during Ms. Liss-Jackson's
17 testimony is that Ms. Boylan, as soon as she got a subpoena,
18 Ms. Boylan is texting Ana Liss-Jackson. Ms. Boylan released
19 that subpoena to the *Wall Street Journal*. She got in touch
20 with Ana Liss-Jackson by text. There were repeated texts that
21 happened. And those are the types things we're looking for
22 for Ms. Boylan. Ms. Jackson produced them. And she didn't
23 have a problem producing them. She produced what she had.
24 And we think she was quite honest during her testimony about
25 this, about why she went to the press. She testified that

Proceedings

26

1 Lindsey Boylan told her and claimed to have personal knowledge
2 that the Governor was having affairs with two to three
3 staffers, which, of course, was not true when Ms. Jackson
4 believed it. She said that's one of the reasons she came
5 forward, but that in her view she had not been sexually
6 harassed. She knows what the definition of sexual harassment
7 is. He didn't touch her inappropriately, and she rarely had
8 personal contact with the Governor. The story that we had
9 understood going into the deposition is that she believed she
10 had been hired because of her looks. But when you spend time
11 talking with her about it, she acknowledged that could have
12 been true. She was hired by the Department of State for the
13 fellows program. She wasn't even assigned to work on the
14 Governor's side of the hall. She was working for the
15 Lieutenant Governor for months. And then Howard Glaser hired
16 her to come work for him because she was impressed with her
17 work. And she said, Well, I began to think I was hired for my
18 looks because other people told me that.

19 Our ability to drill down on this is so important.
20 Again, would prefer not to. It would make this case a lot
21 more streamline. So on the relevance front, I feel stuck.

22 Ms. Trzaskoma and I feel stuck, because with respect
23 to subpoenas that have gone out -- and Mr. Licul talks about
24 all the subpoenas that have gone out -- if you just had --
25 let's just say if you have Lindsey Boylan's allegations alone,

Proceedings

27

1 okay, which she's referenced in 20 paragraphs, her name is in
2 the Complaint 36 times, she made a very serious allegation
3 against the Governor, publicly told the world Governor Cuomo
4 sexually harassed me for years, others watched and knew what
5 was happening. It's a very serious allegation. If she had
6 sued him, that alone, for us to have issued 10, 15 subpoenas
7 for documents and get depositions, maybe two to three, that
8 would be pretty reasonable, and I feel we have to do that
9 because of what a large role she plays in the Complaint.

10 THE COURT: Her college records?

11 MS. GLAVIN: We're not asking for Lindsey Boylan's
12 college records.

13 THE COURT: I'm sorry. Is that Ms. Bennett?

14 MS. GLAVIN: That's Ms. Bennett. And actually, I
15 want to -- we can talk about that. But with respect to Ms.
16 Bennett, she has independently sued the Governor in the
17 Southern District. We actually issued a subpoena for the
18 college records. I think we are coming to an agreement.
19 We're very close to an agreement with plaintiff's counsel. So
20 that may all be for naught because of that other lawsuit.

21 With respect to Ms. Boylan, because of the
22 allegations she made, which she told the world that she left,
23 she implied to the world over a series of tweets in a week
24 that she left because the Governor sexually harassed, that she
25 wouldn't sign a non-disclosure agreement, that she was

Proceedings

28

1 privileged and she could opt out. Once all the statements
2 were made, what we know is that none of that was true. We
3 know why she left. There are three memos documenting why she
4 left. And in the eight months before she left, she had to
5 have meetings twice with the Governor's counsel, one over a
6 Complaint about her relationship with the head of ESD, Howard
7 Zemsky, that they were involved in a sexual relationship and
8 that there was an interaction in front of other ESD employees
9 and there was a complaint, and then six to seven months later,
10 counsel for the Empire State Development Corporation,
11 Elizabeth Fine, and two others asked that she be removed from
12 the ESD payroll because of massive complaints within the
13 agency, on an agency-wide basis. That was the reason she
14 left. And when she was brought to a meeting, she resigned.
15 And then four days came back and tried to get her job back and
16 said I love the Governor, I want to keep working there.

17 So it was a shock to everyone that Ms. Boylan is
18 doing a series of tweets in the middle of a political
19 campaign, that she left for a different reason that was a lie.
20 We have to be able to explore that. I don't care who Lindsey
21 Boylan slept with. I really don't care. What I do care is if
22 this case is going to be about her allegations of sexual
23 harassment, her telling the world that I left because of the
24 Governor's Cuomo harassment and everybody saw it, we have to
25 explore this because that's not why she left.

1 So I feel very stuck here.

2 And if Your Honor wants to take those allegations
3 out, I think everybody here would breathe a big sigh of relief
4 and the case would be narrow. I wish the Complaint wasn't
5 drafted this way. So, on the relevance front, again, the
6 Attorney General's report, I don't care. What I care about
7 is, the only thing I care about in report and the defense
8 right now is, one, we don't want it coming in during trial.
9 And the frustrating part is that in several depositions, the
10 depositions of Ms. DeRosa and Mr. Azzopardi have just been
11 taken, I can't tell you how many times the Attorney General's
12 report came up in the depositions. Plaintiff's counsel asked
13 each of them what about the report -- the investigators, in
14 the manner they conducted it, was unethical? That was part of
15 the line of questioning. And so, as a result of that, we had
16 to then go through several hours of what they believed was
17 problematic with the report. We don't want it to be a part of
18 the case. But the reality it has been asked by plaintiff's
19 counsel.

20 And I fully expect that in Governor's Cuomo
21 deposition they're going to ask a lot of questions about the
22 Attorney General's investigation, and I would prefer it not be
23 part of the case because I don't think very much of that
24 report, as the world knows. Let's not make it part of the
25 case. But I have to deal with the allegations that were

1 dealt. I have to be a defense lawyer.

2 And the last point I'm going to make is after all of
3 the letters that went flying through over the last three
4 weeks, over the number of meet-and-confers that I've had
5 where, I kid you not, I feel like I have to put earplugs on to
6 the degree at which I get yelled at by other lawyers. That is
7 what actually happens during these.

8 I know now why some of my colleges from the Justice
9 Department hates civil discovery. It's pretty brutal. All
10 the letters flying back and forth. I just want to cut to the
11 chase, tell us what you have that's responsive, how many
12 documents do you have.

13 With each of these meet-and-confers, what happens is
14 you have to tell us how it's relevant, and I'm like do you
15 have responsive documents? Have you talked to your client?
16 Who was your client talking to about the allegation? We are
17 not getting those answers, which makes it so hard for us to
18 narrow the subpoena. I would like to have these conversations
19 in good faith.

20 I mean, take, for example, the subpoena to Lindsey
21 Boylan. The irony of it is the subpoena we served to Lindsey
22 Boylan looks pretty close to what the AG subpoena was to
23 Lindsey Boylan. There are several categories that we have
24 since learned about that we have asked about with respect to
25 how she used the sexual harassment allegation to further her

1 campaign, because we think that was the motive, but what was
2 so -- what's interesting to me. And why I don't care too much
3 about what the Attorney General's report says or what she did
4 is that Lindsey Boylan got subpoenaed from the AG's Office
5 asking for all documents or communications concerning her or
6 any other complainants about the Governor. All of her docs
7 and communications reference contacts with the media, okay.
8 Lindsey Boylan didn't produce any of that. She produced 25
9 pages. None of those 25 pages included her text messages back
10 and forth, for instance, with Charlotte Bennett.

11 Then she testifies to the AG, despite having her
12 only produced these 25 pages, she testifies to the AG, yeah, I
13 texted with Charlotte all the time. And no one asked her for
14 the texts. I can criticize the AG, but this is why I have to
15 enforce our own subpoena, because what that produced there we
16 know is incomplete.

17 There's nothing in her production. She published an
18 article on *Medium*, *My Story Working for Governor Cuomo*. We
19 now know, in the weeks leading up to that article, she texts
20 Kaitlin -- and I do want to be heard, because I want the
21 ability to use Kaitlin's last name, because I don't think its
22 right or it's fair given what her allegations are, but she
23 texts Kaitlin like two or three weeks before she writes the
24 article asking her: Do you know where the 2016 holiday party
25 was for the Governor? The reason she's asking that is because

Proceedings

32

1 she's trying to put it in her article and it does appear in
2 her article.

3 Why was none of this produced when it was already
4 subpoenaed the first time? Put that to the side. We have to
5 get it this time.

6 So, again, I would love for this to be out of the
7 case. I'm asking for your help.

8 THE COURT: I can't kick the allegations out of the
9 case in the absence of a motion, as you well know.

10 MS. GLAVIN: Yes.

11 THE COURT: So part of my question for the parties
12 today, and this is sincere, Mr. Licul, are there some
13 boundaries that the parties are willing to work out in terms
14 of what this case is going to look like at trial?

15 I understand you don't want to pre-litigate your
16 case in motion practice during discovery. But this may be the
17 rare case where the interest of the third-parties and the
18 totality of the circumstances call for some of that litigation
19 in an effort to discover the bounds of appropriate relevance.

20 If Ana Liss-Jackson's went as badly for you as Ms.
21 Glavin represented, I would be surprised if you want to call
22 her in your case. You may have a completely different take on
23 how she's relevant or why you want to call her. I have no
24 idea. Similar to some of the other complainants, if these
25 complainants have a lot of other collateral issues that are

Proceedings

33

1 going to be sources of rich cross-examination, do you actually
2 plan to call them? Because if you don't, putting them through
3 this discovery process is wrong.

4 MR. LICUL: May I be heard, Your Honor?

5 THE COURT: Yes.

6 MR. LICUL: A couple of things. One is we have
7 every right to put these witnesses on if we choose to
8 strategically and we don't have to make that decision right
9 now.

10 THE COURT: No, you don't know, but there may be
11 motion practice, in which case it will be pre-litigated. I'm
12 giving you --

13 MR. LICUL: I understand.

14 THE COURT: -- the opportunity to discuss it with
15 them and figure out whether or not there may be a boundary
16 that you can live with.

17 MR. LICUL: Let me just say this, okay, this is not
18 a case -- I can't speak to the other lawyers -- where the
19 plaintiffs and the defendants' lawyers are at each other
20 throats.

21 MS. GLAVIN: Oh, yes. I should make that clear.
22 It's not. I should make that clear, Your Honor.

23 THE COURT: Good to know.

24 MS. GLAVIN: We actually -- we have been able to
25 work, I think, quite collaboratively to come up with

Proceedings

34

1 solutions. The -- I think the most difficult part has been
2 with some of the nonparties. And I think the tenor of the
3 discussions have been, frankly, disappointing, not with all of
4 them.

5 THE COURT: I'm sure they feel re-traumatized to the
6 extent that they originally experienced trauma. And that's
7 part of the problem with this strategy, Mr. Licul. With all
8 respect to Trooper 1's ability to present this case, if this
9 is not really a viable strategy legally, it's not ethically
10 right to put them through this, and you know that.

11 MR. LICUL: Your Honor, I have an ethical obligation
12 to zealously try my client's case.

13 THE COURT: Correct. Within the bounds of the law.
14 And if there are significant questions that touch upon whether
15 or not this information is going to come in, I'm wondering if
16 this is the rare case where we need to do things in a
17 different order.

18 MR. LICUL: Let me just -- because Ms. Glavin has
19 given some examples where she said they've acted unreasonably,
20 and as much as I like Ms. Glavin, she's just wrong.

21 Let's take Ms. Perrotta. They have subpoenaed her
22 phone records. Her husband's phone records and her daughter's
23 phone records.

24 THE COURT: She was collaborating with Trooper 1 on
25 her testimony, that seems like a fair swath of subpoenas.

Proceedings

35

1 MR. LICUL: Your Honor, if I may --

2 THE COURT: And she included them in her papers, by
3 the way, those texts.

4 MR. LICUL: We provided those texts.

5 THE COURT: Yes.

6 MR. LICUL: I understand. The allegation is that
7 Ms. Perrotta reached out to Trooper 1 and Trooper 1 never
8 picked up her call. Now, that's not evidence of some grand
9 conspiracy. That's evidence of no conspiracy. But let me
10 tell you what we did offer to avoid any burden on Ms.
11 Perrotta. We've offered to produce to Cuomo's camp the phone
12 records that the correspondence -- phone number to phone
13 number, between Trooper 1 and -- and Ms. Perrotta and her
14 husband, and her daughter. In other words, we've said we will
15 give you those records. We have them. We'll give them to
16 you. Not good enough, that seems like a perfect sensible
17 solution to the problem.

18 Why don't they do it? Because they want the full
19 phone records. They want to go on a fishing expedition. Let
20 me talk a little bit about the reasons why Governor Cuomo
21 won't be deposed.

22 THE COURT: Governor Cuomo will be deposed.

23 MR. LICUL: No. But he wants to go last, Your
24 Honor. He has no right to go last. There is not a single
25 case in this district or in this Circuit that says that a

Proceedings

36

1 defendant has a right to wait it out. And the cases go other
2 way. He is a party -

3 THE COURT: I'm sorry. We are not addressing the
4 timing of Governor Cuomo's deposition today. We have a
5 gallery full of third-parties. This is not the appropriate
6 time to talk about the exact timing of Governor Cuomo's
7 deposition. There are a myriad other pressing discovery
8 issues in this case. I assure you that Governor Cuomo will be
9 deposed. Defense counsel knows that. The question of timing
10 is one that is factually complex and not necessary to talk
11 about today when we have all these other folks waiting.

12 MR. LICUL: I understand, Your Honor. It is the
13 subject of one of our motions.

14 THE COURT: I recognize that.

15 I started to say there's no motion and then I
16 remember there was, so I stopped. But I do recognize that's
17 one of your motions. The motion is not ripe because there's
18 so many discovery issues outstanding. I wouldn't want to take
19 their deposition if I were their counsel either, and I'm
20 surprised you do, because if you don't have all of the other
21 information that may be coming in, I would imagine there would
22 be a number of things that you would like to ask him about.

23 MR. LICUL: We are prepared to take his deposition.
24 We have been prepared to take his deposition. He is a party,
25 I've always litigated these cases that the parties go first.

Proceedings

37

1 In fact, some of your colleagues, Your Honor, put that in
2 their rules, that the parties go first, and I think it's a
3 perfectly sensible solution.

4 Let me just talk about Ana Liss-Jackson for one
5 second. And I understand Your Honor said that her legal
6 conclusion is irrelevant, and I agree. What Ms. Liss-Jackson
7 said was that she thought the environment was Mad Menesque and
8 that she was treated less well because she's a woman. That is
9 the very definition of discrimination.

10 Now, with respect to the report, they say they don't
11 want to touch the report. That is untrue. Just last week
12 they subpoenaed the Cleary firm and the Vladeck firm for all
13 of their documents concerning the AG's.

14 MS. GLAVIN: That's not so. That's not --

15 MR. LICUL: Why would they do that? They were
16 appointed as attorney -- as Deputy Attorney Generals to do the
17 investigation. Your Honor, denied the request to turn over
18 the AG's records, yet they went ahead and subpoenaed the firms
19 anyway.

20 THE COURT: Is that the billing records?

21 MS. GLAVIN: No, Your Honor. We subpoenaed them.
22 We're trying to get the interview memos, which are up on
23 motion for reconsideration before the Court.

24 THE COURT: That's not -- that's for later.

25 MS. GLAVIN: Yes.

Proceedings

38

1 THE COURT: This is for 12:00. You're welcome to
2 stay when the Attorney General's Office is here.

3 MR. LICUL: Thank you, Your Honor.

4 THE COURT: Things touching upon the Attorney
5 General's Office are scheduled for 12:00.

6 MR. LICUL: I was just responding to Ms. Glavin's
7 argument that they have been acting reasonably and they don't
8 care about the report. It's just not true. Anyway, Your
9 Honor I don't know that I have anything else unless Your Honor
10 has a question for me.

11 THE COURT: No. What I'm lacking is solutions,
12 right. Everyone agrees this is a mess, Mr. Licul has
13 suggested a process similar to the one we have employed for
14 defendants Mr. Azzopardi and Ms. DeRosa, but, you know, I
15 don't know if something similar would work for the
16 third-parties.

17 MS. GLAVIN: So I wanted to understand precisely
18 what the process is. Is the proposal on the table that
19 there's no discovery with respect to the nonparties and it's
20 just discovery on the Trooper case?

21 THE COURT: That was not his suggestion. As I
22 understood the suggestion, correct me if I am wrong, Mr.
23 Licul, is that the third-parties, at a minimum, would give you
24 the documents that were provided to the Attorney General's
25 Office and from there, meet and confer in an effort to

Proceedings

39

1 determine what additional documents are needed.

2 MS. GLAVIN: So here's the issue, we have gotten --
3 so Lindsey Boylan produced to us what she produced to the
4 Attorney General's Office: 25 pages. We know that she has
5 had extensive communications with the press about her
6 allegations, with other complainants about her allegations,
7 including, you know, up to recently. We need those. We've
8 looked at the 25 pages and it's just relatively worthless to
9 us.

10 We got a production of documents from, I think it's
11 Kaitlin and Ana Liss. Ana Liss gave us more than what she
12 gave the AG's Office.

13 That's basically what the proposal has been for all
14 of the nonparties. But there's very little in those, and we
15 don't know the degree to which the Attorney General's Office
16 renegotiated those. For instance, Charlotte Bennett hasn't
17 produced to us any of the documents that she produced to the
18 Attorney General's Office.

19 THE COURT: You also mentioned that Charlotte
20 Bennett is the plaintiff in the Southern District case. What
21 is the status of the discovery there? I don't believe her
22 counsel is here today. What is the status?

23 MS. GLAVIN: Yes.

24 MR. COHEN: I represent Charlotte Bennett.

25 THE COURT: I'm sorry. What was your name, sir?

Proceedings

40

1 MR. EISENBERG: Herbert Eisenberg.

2 THE COURT: Herbert Eisenberg. Okay. Thank you.

3 MS. GLAVIN: Discovery has just started. Document
4 requests were made and the parties are making objections.
5 There are different parties in that case, additional
6 defendants in that case. The discovery deadline now is set
7 for June of 2024.

8 One of the reasons we subpoenaed Ms. Bennett is
9 because we were facing this discovery deadline in this case
10 for the 26th. I think we can work a lot of this stuff out,
11 and I'm amenable to doing that with Ms. Bennett, the problem
12 is I can't speak for Ms. DeRosa and Mr. Azzopardi, who are
13 defendants in this case. You know, there are going to be some
14 different issues in the two cases.

15 THE COURT: The other defendants are not named in
16 the --

17 MS. GLAVIN: One is not. Ms. DeRosa is. There is a
18 motion to dismiss pending for all of the claims against Ms.
19 DeRosa, but I can let Ms. Foti address that.

20 THE COURT: Ms. Foti, can we resolve the Charlotte
21 Bennett matters in the Charlotte Bennett case or is there a
22 risk of conflicting rulings? That's my concern.

23 MS. FOTI: Well, I think there's certainly a risk of
24 conflicting rulings. But I will tell you why I don't think we
25 can resolve it just by the Charlotte Bennett case. Unless Mr.

Proceedings

41

1 Licul removes from his Complaint reliance on Charlotte Bennett
2 as a reason why my client Ms. DeRosa would have been on notice
3 of sexual harassment, we have to depose Ms. Bennett. We have
4 to get her documents.

5 Right now, I have to tell you, the people who are
6 suffering the most prejudice in this case -- I hear the
7 parties saying they're suffering prejudice. It's my clients.
8 My clients -- Melissa DeRosa say hello and goodbye to Trooper
9 1. Richard Azzopardi doesn't know Trooper 1. There's no
10 claim that they did anything to participate in Governor Cuomo
11 harassment. That is the requirement; they did something, that
12 they knew something. There's no claim in the Complaint that
13 any of that is true. Notwithstanding that, they're
14 participating. They have sat through their depositions.
15 Nothing came out during the depositions to suggest that they
16 did anything to participate in the sexual harassment.

17 Notwithstanding that, we have to depose all of
18 third-parties as well because, as I understand the theory of
19 the plaintiff's case, is that because all these other
20 individuals claim that they were harassed. Ms. DeRosa must
21 have known. And Mr. Azzopardi, even in their answers to the
22 motion to dismiss, say maybe Mr. Azzopardi participated --
23 aided and abetted in Governor Cuomo's sexual harassment as
24 well. We have to have an opportunity to question that.

25 If Mr. Licul wants to drop our clients, that would

1 be great. We have been waiting for a decision on the motion
2 to dismiss because we don't think there's sufficient
3 allegations against our clients in the Complaint. If they
4 want to drop, then we need nothing further in this case.

5 If he wants to continue to say that Melissa DeRosa
6 and Richard Azzopardi were aiders and abettors and enabled
7 Governor Cuomo's alleged sexual harassment, then we need to
8 have responses to the subpoenas as well. Our subpoenas are
9 very limited. But what's interesting to me is that we can't
10 just say well, if we're going to negotiate the subpoenas for
11 Governor Cuomo, that's it. We need to be able to question the
12 -- all these third-parties on what they apparently think Ms.
13 DeRosa knew, what they think Ms. DeRosa saw, what they believe
14 Mr. Azzopardi may have done to enable Governor Cuomo's sexual
15 harassment.

16 So I'm not positive the negotiated -- you know, this
17 concept of negotiating something similar to what we have done,
18 I'm not positive how that would work. We have very limited
19 document requests and a number of the third-parties have said
20 they don't have documents responsive. We're asking for
21 documents relating to Melissa DeRosa and Richard Azzopardi.
22 We're not asking for every document in the world. A number of
23 them have said that they don't have those documents or they
24 have already produced them in response to Governor Cuomo's
25 subpoenas. And we have been working with the third-parties to

Proceedings

43

1 say okay, if that's the case, we're not going to pursue that,
2 but we need to pursue the deposition of the third-party.

3 THE COURT: Thank you.

4 MS. FOTI: I'm not sure how we can negotiate a
5 settlement without having them testify.

6 THE COURT: I understand.

7 And on behalf of the New York State Police, Mr.
8 Palermo, what do you think as to this proposal? Would this
9 work for you?

10 MR. PALERMO: Your Honor, are you talking about the
11 proposal of providing the documents from the AG initially --

12 THE COURT: And then meeting and conferring and
13 trying to resolve things prior to filing -- the problem with
14 motions to compel -- there are many, many problems with
15 motions to compel. One of them is they take a really long
16 time because you have to file it and then they have to respond
17 and then people sometimes file a reply. Whether that is
18 really all permitted under our local rules, it is not. People
19 still do it. And it takes weeks. In the meantime, other
20 motions are getting file and then they cross apply to issues.
21 It's an extremely insufficient process.

22 My individual rules require a joint statement of
23 each dispute, jointly stated in one filing so that everybody
24 knows what the universe of information for that dispute is.
25 That method, which is in my individual rules, really hasn't

Proceedings

44

1 been followed in this case, with the exception of, in the
2 beginning, there was one small issue that bubbled up and we
3 had a conference and then resolved it in that conference.

4 But there are so many problems with motions to
5 compel and they are extraordinarily inefficient. So my goal
6 is to try to find some guidelines for the parties and the
7 nonparties to sort of just better move through this discovery
8 process. As the attorneys for the nonparties are hearing, I
9 know many of your clients likely think that Governor Cuomo is
10 trying to continue to harass or victimize them. The issues
11 that the Court is struggling with in this case, as you've
12 heard, are these wide scope of the plaintiff's allegations in
13 the Complaint. And if that is the universe of information
14 that Governor Cuomo is being asked to defend against. There's
15 a lot of discovery that he may need to take in order to move
16 to strike those allegation, move to narrow the discovery that
17 come in at trial, or defend himself if all of those witnesses
18 are ultimately called. That's the problem. I would think
19 that all of you, as advocates for the third-parties, would
20 also be very interested in meeting and conferring with Mr.
21 Licul and Ms. Glavin in an effort to narrow what this case is
22 going to look like, because if this case is really going to be
23 all 11 complainants coming into court testifying this
24 discovery process is going to be quite laborious and
25 unfortunately further expose your clients to addition process.

Proceedings

45

1 Anyway, back to the New York State Police.

2 MR. PALERMO: Thank you, Your Honor. Given the
3 stance we find ourself in right now, we would be amenable to
4 proceeding with that proposal. I suppose having some
5 production at least to get things going might be beneficial
6 since we're not moving very quickly anywhere.

7 A lot of information being sought in the subpoenas
8 isn't necessarily relevant to the allegations specifically
9 against the New York State Police, so we don't necessarily
10 take a position one way or the other on a lot of the
11 subpoenas. But, you know, our client would be amenable to
12 cooperating with that proposal if we want to move forward in
13 that direction.

14 THE COURT: Thank you.

15 Mr. Licul, do you have an idea?

16 MR. LICUL: I have an idea or I just have a
17 clarification in response to Ms. Foti and her client.

18 The allegations against Mr. Azzopardi are limited.
19 He is being accused of retaliating against Trooper 1 and
20 aiding and abetting the Governor's retaliation against her by
21 calling her an extortionist. He is not being accused of being
22 an aider and abettor to the sexual harassment. And what we
23 learned from Mr. Azzopardi's deposition is that when Trooper 1
24 filed this action, he and the Governor sat down together and
25 drafted a tweet that called her an extortionist. The tweet

1 was sent out under Mr. Azzopardi's name presumably so no one
2 could trace it back to the Governor. But that is what the
3 allegations are against Mr. Azzopardi.

4 The allegations against Ms. DeRosa are twofold: One
5 is that she too at some point sent out a tweet accusing
6 Trooper 1 of committing a crime of extortion; and two, that
7 she aided and abetted the sexual harassment because, among
8 other things, she buried a story about how it was that Trooper
9 1 got on to the PSU. She had specific involvement in that.
10 Okay. And, so -- and, so, I want to be clear about those
11 allegations.

12 With respect to the Governor, there is no reason on
13 this good earth that the Governor could not testify. He
14 already has, in fact, testified about his interactions with
15 each of the victims. He knows what happened. He doesn't need
16 their testimony. He's already got it anyway. He doesn't need
17 it. What he's trying to do is trying to attack their
18 credibility extraneously with outside evidence. I think that
19 that's the problem. But I'm not sure if that was the
20 solution.

21 THE COURT: That's clear, but that's part of
22 defending our case.

23 MR. LICUL: To an extent.

24 THE COURT: It's your position they're not entitled
25 to discover impeachment material? I'm not understanding your

Proceedings

47

1 argument.

2 MR. LICUL: No. I think that the scope of the
3 impeachment material will depend, right. It depends on how
4 far you're going to go. Are you going to dig under every
5 single rock for every witness and see everything that they've
6 ever done?

7 THE COURT: Well, you were, just a moment ago,
8 taking the position that you need to zealously advocate for
9 your client.

10 MR. LICUL: I understand that, but there are limits
11 to zealous advocacy and at some point the zealous advocacy
12 crosses the line and the information you're looking at, you're
13 just not going to get in, right.

14 THE COURT: Agreed, and that is why I am asking you
15 to also look hard at your case and truly evaluate whether or
16 not this evidence is going to come in and have meaningful meet
17 and confers with the litigants who are the third-parties here,
18 because putting them through this deposition process and
19 continuing to re-traumatize some of these individuals when
20 this stuff may or may not come in depending upon what temporal
21 proximity, overlapping work environment, all of the things
22 that one would look at to establish whether or not there is a
23 404(b) exception and/or it comes in under the hostile work
24 environment discussion outlined in the *Perry* case.

25 It is not at all clear to me, Mr. Licul, and I don't

1 think it would be clear to any jurist on the basis of the
2 current record that all of these victim's testimonies are
3 going to come in. So what I implore you to do, sir, is
4 exactly what you just described you would like to the Cuomo
5 people to do, and I would like you to do it to. You need to
6 be strategic and you need to re- evaluate what you think is
7 coming in. And if you're willing to cut some stuff, great.

8 Similarly, if the Cuomo people, if they can stop you
9 know, looking -- I mean, subpoenaing all of the phone records
10 under the sun is not going to happen, and I think Ms. Glavin
11 knows that. But some discovery of impeachment, and certainly
12 if there is any collusion, they're going to be entitled to
13 some leverage of discovery there.

14 MR. LICUL: If they think that Ms. Perrotta
15 concluded with Trooper 1, they could have asked Trooper 1 at
16 her deposition. I mean, that's the first place to look,
17 right? What did you say to Diane Perrotta? Right. I don't
18 understand going after her, you know, everything else about
19 her. And accusing her of perjury is pretty heavy-handed.
20 They don't have any evidence that she perjured herself. It is
21 intended to intimidate a witness.

22 Now, with respect to Your Honor's first point on the
23 scope of the evidence that's get in, they have not cited to us
24 a single case where other harassment by the perpetrator was
25 not admitted. That's not what we are talking about. All the

Proceedings

49

1 other cases say that perhaps discrimination by others in the
2 employment world, another supervisor or another co-employee
3 may not be relevant to the employer's knowledge or some other
4 -- but where we're talking about the actual perpetrator, I
5 haven't found that case, and I welcome them to show it to me.
6 We can talk about it. I have no problem talking to Ms. Glavin
7 about anything. But that's just not the law.

8 And I think that they know what these witnesses are
9 going to say. They've already testified under oath. There
10 may be some latitude there. I just don't see that it's this
11 broad.

12 Anyway, I understand Your Honor's instruction.

13 THE COURT: One other question.

14 MR. LICUL: Sure.

15 THE COURT: Do you anticipate seeking to introduce
16 portions of the report?

17 MR. LICUL: Yes.

18 THE COURT: And I assume that's under Rule 803(8).

19 MR. LICUL: Yes.

20 THE COURT: What portions?

21 MR. LICUL: I'm not sure just yet, Your Honor.

22 That's not been teed up. But I think there are portions of
23 the report, and perhaps the Assembly report, that would be
24 relevant under 803(8).

25 And there's also a second piece of this, which is

Proceedings

50

1 because we have the State here as a defendant, there may be a
2 party admission pact to getting the report in as well.

3 THE COURT: I mean, as you know under 803(8), the
4 admissibility in a civil context is limited to --

5 MR. LICUL: It's the factual findings, Your Honor --

6 THE COURT: Factual findings. Exactly.

7 MR. LICUL: -- from a legally authorized
8 investigation.

9 THE COURT: Right.

10 MR. LICUL: This was a legally authorized
11 investigation.

12 THE COURT: I don't think that's going to be
13 contested. But what are factual findings in the context of
14 hearsay?

15 MR. LICUL: I'm not sure all of this is hearsay,
16 Your Honor.

17 THE COURT: The facts, as I read the report, are
18 that these people told things to the investigators.

19 MR. LICUL: Right.

20 THE COURT: That doesn't make what they told the
21 investigators true, I mean. So what are the facts that you
22 are seeking to introduce?

23 MR. LICUL: Well, what they told the investigators,
24 the factual findings, what the investigators found, in other
25 words, the holdings of the investigators --

Proceedings

51

1 THE COURT: That's the investigators' conclusion and
2 those are mixed questions of law and fact and that's really
3 what I'm getting at. Under the 803(8), the legal conclusions
4 are not likely to come in, as you know. And I think a lot of
5 what's blurring the lines here is this belief that people have
6 an understanding of their own experience of sexual harassment
7 that may comport with legal definitions. It doesn't
8 necessarily. And it is highly, highly prejudicial under Rule
9 403. 803(8), doesn't throw 403 out the window.

10 MR. LICUL: That's right, Your Honor.

11 THE COURT: So the question then is they don't know
12 what portion of the report you plan to introduce and if
13 you're, in fact, seeking to introduce the factual findings,
14 whatever they are, which is really unclear to me, they're in
15 very uncertain terrain in the discovery process here.

16 MR. LICUL: Well, I mean, this is like no different
17 than any other case where the EEOC --

18 THE COURT: There is no other case like this, Mr.
19 Licul.

20 MR. LICUL: That may be true.

21 With respect to this point, Your Honor, the Second
22 Circuit has clearly said that investigations are not per se
23 admissible.

24 THE COURT: Exactly.

25 MR. LICUL: They are still subject to the balancing

Proceedings

52

1 test of 403, but they're not per se inadmissible.

2 THE COURT: Legal conclusions are pretty
3 inadmissible under the language of the rule and the case law.

4 MR. LICUL: No, but the factual findings are not, so
5 if the --

6 THE COURT: Sexual harassment is not a factual
7 finding.

8 MR. LICUL: No, but a factual finding that something
9 happened on a particular day.

10 THE COURT: Maybe. Maybe. But it is still hearsay.

11 MR. LICUL: It wouldn't be hearsay because this is
12 not hearsay.

13 THE COURT: It's a hearsay exception.

14 MR. LICUL: But it's not an exception. It's
15 actually not hearsay, Your Honor.

16 THE COURT: So there's layers of complexity to this,
17 is the point.

18 MR. LICUL: That I agree.

19 THE COURT: And Ms. Glavin and Ms. Trzaskoma, as
20 discussed at length in the hearing we had regarding the
21 Attorney General's report and the AJC report, you know,
22 there's a lot of issues inherent in introducing this report
23 that they can't fully test because they can't get the
24 underlying investigative materials to it due to various
25 rulings I have made so far. We're revisiting some of those

Proceedings

53

1 questions at noon. It will probably be a little later than
2 noon, if Mr. Amer is here.

3 So you know, this is a really complicated question
4 and because the way this discovery is going may again need to
5 be addressed earlier in the process than in motion in limine
6 perhaps right before trial. I mean, is this something we need
7 to deal with? Do we need to deal with the universe of
8 witnesses and the scope of the admissibility of the report
9 now?

10 MR. LICUL: No.

11 THE COURT: Because I don't see a way forward, Mr.
12 Licul, other than continue what they are doing. Those are
13 sort of options that seem to be on the table.

14 MR. LICUL: I don't understand why an 803(8)
15 analysis would allow them to do the discovery that they are
16 asking for. Let's say, for example, a witness says Governor
17 did this to me on this day and, let's say, the report says we
18 find --

19 THE COURT: Let me give you one clue, 803(B), the
20 opponent -- this is a record or a statement of a public office
21 can come in if the opponent does not show that the source of
22 information or other circumstances indicate a lack of
23 trustworthiness. I'm quite certain, based on our prior
24 discussions in this case, that they're seeking to establish
25 that the report lacks trustworthiness.

Proceedings

54

1 MR. LICUL: But they have the sworn testimony of the
2 witnesses upon which the findings are based.

3 THE COURT: And based on their one complainant's
4 deposition so far, they take issue with how the report
5 characterizes their testimony.

6 MR. LICUL: Okay. We take issue with their
7 characterization of it.

8 THE COURT: Of course you do.

9 MR. LICUL: I understand.

10 THE COURT: This is why this is front and center in
11 their discovery efforts.

12 MR. LICUL: No, but, Your Honor, if what they're
13 saying -- typically, when we're talking about trustworthiness
14 in this context of discrimination, it will be an EEOC finding
15 that's one page long with no investigation, and then it's
16 often the defendant who will say we have a no probable cause
17 finding, we would like to introduce this to the jury, and the
18 judge says no, it lacks trustworthiness because there was no
19 investigation, nothing happened. That's the scope of the
20 trustworthiness rule.

21 In this particular case, they cannot argue that.
22 They can argue that Tish James wanted to be the governor, that
23 Preet Bharara was out to get him.

24 THE COURT: No one wants this trial to be about
25 that. I can assure you that Judge DeArcy Hall does not want

1 this trial to be about that.

2 MR. LICUL: Neither do we, but the point is, Your
3 Honor, that's their attack on trustworthiness. Their attack
4 on trustworthiness is not you didn't do an investigation, you
5 didn't interview people, you didn't, you know -- you didn't do
6 the inquiry you're supposed to do.

7 THE COURT: Their argument as to Jackson is that the
8 conclusions of the investigators were wrong.

9 MR. LICUL: But Ana Liss-Jackson's testimony they
10 have. And Ana Liss-Jackson testified about her interactions
11 with the Governor. And Ana Liss-Jackson's testimony,
12 regardless of what her legal conclusions are, is the very
13 definition of a hostile work environment where woman are
14 supposed to act a certain way, look a certain way, where they
15 get attention from the Governor, a wink from the Governor
16 because they are women, and attractive women. It is the
17 boilerplate definition of sexual harassment. She described it
18 as Mad Menesque. I cannot think of what else that would mean
19 other than we are going back to the 50s in terms of the
20 environment. That's what we are talking about here.

21 Anyway, we can argue about what Jackson's said.

22 THE COURT: Correct. That's the problem. There's
23 so many layers of factual complexity here, trying to rule on
24 evidentiary parameters on the basis of the present record is
25 very, very difficult, if not impossible, without having

1 full-blown evidentiary hearings on this motion to compel and
2 nobody wants to do that either. So that's why I'm trying to
3 find some sort of strategy that the parties can employ to
4 meaningfully engage and narrow these disputes in an effort to
5 move this discovery process along.

6 In the meantime, the third-parties are here. I see
7 many lawyers waiting. They have an important interest at
8 stake as well.

9 MR. LICUL: Your Honor, I will -- lacking any
10 creativity here, I will just repeat what I said earlier, which
11 is they can produce what the witnesses produced to the AG's
12 Office. And if there are gaps, they can have that discussion
13 with the witnesses and explain why they need more. It worked
14 for DeRosa and Azzopardi. I don't see any reason why it
15 wouldn't work here.

16 THE COURT: Let me ask the third-parties what they
17 have produced, what they are prepared to produce, and whether
18 or not they consent to the Attorney General's release of their
19 information. Those are some of the questions that I have for
20 the third-parties, because that is another way that I need to
21 -- again, I don't know if the Attorney General's Office is
22 going to be amenable to my suggestion in the order that I
23 issued in connection with the prior opinion in this case. But
24 they seem to be, so we will see.

25 My understanding, and please let me know if there

Proceedings

57

1 are additional attorneys who have come and who have not stated
2 their appearance. I have a Mr. Capezza for State employee 2,
3 Ms. Cohen here for Ms. Hinton. And is that a colleague
4 sitting next to you?

5 MS. WANG: I represent Ms. Limmiatis and Ms.
6 McGrath.

7 THE COURT: Could you spell your last name for me?

8 MS. WANG: W-A-N-G.

9 THE COURT: Okay. And then Mr. Eisenberg has
10 introduced himself.

11 I recognize Mr. Najmi.

12 And then is there anybody else on behalf of
13 third-parties?

14 MS. SALZMAN: Zoe Salzman on behalf of non-party
15 Kaitlin Doe.

16 THE COURT: All right. Mr. Capezza --

17 MS. PERRY: Your Honor --

18 THE COURT: Yes, of course. You've put your
19 appearance on the record already.

20 All right. So Ms. Boylan has obviously been the
21 subject of a lot of conversation today. Ms. Perry, you are
22 sitting by a microphone.

23 Mr. Capezza, if you wouldn't mind just holding on
24 one, Ms. Boylan's attorneys probably have a lot they would
25 like to say in response to many of the things that have been

Proceedings

58

1 said today.

2 Ms. Perry, would you like to start?

3 I have three basic questions for all of the
4 third-parties, which is one, what, if anything, have you given
5 in response to subpoenas?

6 Two, what are you willing to give?

7 Three, do you have an objection to the release of
8 information that the Attorney General's Office has regarding
9 your client, including the unredacted transcript, and anything
10 that was provided to the Attorney General's Office?

11 Their interview memos are something that the Cuomo
12 people are also seeking. Whether or not those are protected
13 by other privileges is a separate question. But I'm curious
14 what your client's position is with regard to the release of
15 interview memos.

16 MS. PERRY: Your Honor, I do have a lot to say and I
17 hope we will get to it, but as to that narrow question, we
18 have already produced, as counsel has said, documents that
19 have been produced to the AG's Office. We, of course, have no
20 problem with that. Ms. Glavin seemed to insinuate that Ms.
21 Boylan had underproduced, but she also acknowledged that she
22 was not party to the back and forth between Ms. Boylan's
23 counsel and the AG's Office. That was an agreed upon
24 accommodation and she produced what she produced to the
25 satisfaction of the AG's Office. So, of course, we would be

Proceedings

59

1 amenable to that suggestion, that we -- you know, that is the
2 limit of what would be produced.

3 THE COURT: That's all your willing to provide?

4 MS. PERRY: Well, we did have a meet and confer with
5 counsel. I did not yell at Ms. Glavin --

6 MS. GLAVIN: She did not.

7 MS. PERRY: And we had made clear an openness to
8 producing additional categories of documents, specifically --
9 and I can go through the exact document request, but documents
10 that broadly spoke to or where Ms. Boylan and others spoke to
11 the specific allegations that Ms. Boylan has made in the past
12 against Mr. Cuomo. But we said if the parties -- if the
13 defendants were willing to make that comprise, we would be
14 done, and we would not produce other documents pursuant to the
15 other requests. They rejected that. But we were very clear,
16 and I'm clear here today, that we do not agree and never will
17 agree to produce documents that go to all these other
18 categories: Ms. Boylan's sexual history, her campaign
19 fundraising, her, you know, employment records, and complaints
20 that were allegedly made against her. We do not agree and we
21 spoke about that extensively in our papers.

22 THE COURT: Is it true that Ms. Boylan made public
23 statements that the harassment is why she left?

24 MS. PERRY: Yes, she did. She was the first person
25 to tweet about her experience of sexual harassment, by the

Proceedings

60

1 Governor and she made public statements about why she had
2 left. That was explored by the Attorney General and she
3 produced any documents that were agreed upon between her and
4 the AG's Office.

5 THE COURT: If there are other documents shedding
6 light on additional reasons she left or was asked to leave,
7 why wouldn't that be relevant in light of that public tweet?

8 MS. PERRY: The problem here -- there is, of course,
9 under Rule 26, a relevance component and proportionality, and
10 we are so far outside of any universe of proportionality here.
11 When they're trying to explore that and they're saying they
12 are entitled to get communications between someone who worked
13 on her campaign and Ms. Boylan about why this other person
14 resigned hoping that may be it goes to something having to do
15 with her political motivations, that is way too far afield.

16 Just within the past month, Ms. Boylan's college
17 intern on her campaign was subpoenaed by all the defendants in
18 this case. This is way too far afield. Your Honor has talked
19 about boundaries. There are none in this case.

20 And so, I couldn't agree more with Your Honor's
21 admonition or suggestion that perhaps the parties should work
22 this out. I think all of the victims would agree with Your
23 Honor's characterization that they have been re-traumatized by
24 this. Ms. Boylan certainly feels that way. I think there is
25 plenty of blame on both sides of the aisle for that.

Proceedings

61

1 If the parties could agree on what the limits are,
2 what the boundaries are, I'm sure everybody -- I certainly can
3 speak for my client -- would appreciate that.

4 Some of the questions Your Honor has raised about
5 well, these other allegations of sexual harassment, if they
6 have nothing to do with Trooper 1's workplace, do they come
7 in? I understand that plaintiff might not have to do that
8 now.

9 Your Honor spoke about moral and ethical, you know,
10 reasons, and I actually think that should be the consideration
11 here. When you are talking about 11 women who are being
12 dragged in here kicking and screaming who want rest and
13 repose, to put this behind them.

14 Ms. Glavin said in her statement something to the
15 effect of well, if Ms. Boylan had sued the Governor, then we
16 would be entitled to these 15 subpoenas or I don't -- I've
17 lost count, actually, because there are others that we don't
18 even know about. That might be right. But she didn't.

19 She decided -- she made allegations. It had, of
20 course, a domino effect, and we all know what happened, and
21 she was dragged through the mud. Her name -- I mean, even up
22 to this day in this courtroom in the papers she's labeled a
23 bully, a liar, an adulterer. She wants to be done with it.
24 So if there are accommodations and agreements that the parties
25 could make, I couldn't agree with Your Honor more. I think

1 that would be very welcome by all the victims, including my
2 client.

3 I know I went a little farther outside of what Your
4 Honor asked and it will go to the ultimate questions in our
5 motion to quash.

6 But -- so with respect -- I just want to get to the
7 last component of the very narrow question Your Honor just
8 posed to each of the complainants. I actually don't know
9 exactly what the AG's Office has, what these interview memos
10 and the like are, so it's hard for me to say, and I suppose,
11 you know, we can meet and confer again and see if there's any
12 sense or understanding.

13 THE COURT: The interview memos are sort of a third
14 tier of discovery from the Attorney General's Office, that
15 there will be any from the Attorney General's.

16 The first question is the unredacted transcript. Do
17 you object to the release of the unredacted transcript?
18 Obviously, personal identifying would still remain redacted.
19 But to the extent there are redactions of other witness'
20 names, specific things -- I mean, I do understand what Ms.
21 Glavin is saying. Occasionally, it is hard to follow the
22 transcript. But by and large, they're not that heavily
23 redacted, in my view.

24 So the first question is transcript.

25 MS. PERRY: We would certainly be willing to

Proceedings

63

1 consider that. I can't say standing on my feet right now,
2 because I would have to consult with my client, I have to look
3 at the specific redactions. But that's certainly something we
4 would be willing to consider.

5 Just to be very clear, Ms. Boylan stands by all of
6 her allegations. She's not embarrassed by her allegations.
7 She's not worried that she's going to be made to look a liar
8 for having accused the Former Governor of harassment because
9 he did that. So I think I would be very open to that
10 discussion, but I'm not in a position where I can commit to
11 that right here right now.

12 THE COURT: Okay. Thank you.

13 MS. GLAVIN: Your Honor, if I might be heard on a
14 couple of the points with the subpoena.

15 THE COURT: What about them?

16 MR. PARK: With respect to the subpoenas, I just
17 want the Court to be aware.

18 THE COURT: Which subpoenas?

19 MR. PARK: The subpoena Ms. Perry referred to, Ms.
20 Boylan's college intern.

21 The subpoena was to Ms. Boylan's campaign director
22 of media relations. And the reason we subpoenaed her is that
23 Ms. Boylan would dictate messages to this woman, I think her
24 name is Stephanie Parish, which that woman then communicated
25 to other complainants in the case. We have several examples

1 of that.

2 The reason we subpoenaed her is because we were not
3 getting -- Ms. Boylan was refusing to produce her
4 communications with others, with particular complainants
5 relating to the allegations. And we knew from production by
6 another party that there were these messages. I think the
7 director of media relations had access to Ms. Boylan's Twitter
8 account and she would communicate with others on it. So you
9 would have a hi, it's Steph, here's a message from Lindsey,
10 boom, and there would be, you know, things she wanted, you
11 know, this person to know. That's why we subpoenaed that
12 particular person. It was once we saw that in documents we
13 got from others, we subpoenaed her, because we wanted to get
14 to those communications.

15 THE COURT: And you subpoenaed that person for
16 communications?

17 MS. GLAVIN: I actually can't even remember what the
18 subpoena was, but it was for documents.

19 And then with respect to Ms. Boylan, I want the
20 record to be clear, she's not a victim of sexual harassment.
21 The Governor --

22 THE COURT: We're not trying the case today, Ms.
23 Glavin.

24 MS. GLAVIN: But given the statement that was made,
25 I have to make clear what the Governor's position is, is that

1 he never sexually harassed Lindsey Boylan, and that is one of
2 the reasons that we need to get discovery.

3 THE COURT: Thank you.

4 MS. PERRY: Your Honor, I never said -- I know this
5 is a bit of a sideshow at this point.

6 The, quote/unquote, director of media relations was
7 a college intern. And they're saying they had to subpoena her
8 because Ms. Boylan wouldn't produce. That is the subject of
9 this motion.

10 We did ask -- with respect to once we got wind that
11 they were continuing to issue this battery of subpoenas, we
12 asked the Court to direct the defendants to stop essentially
13 issuing or, at least, did not seek enforcement, and they've
14 just continued to do it.

15 So even though a resolution of these issues would
16 put to bed, you know, the scope of what they can do, they're
17 just continuing. So hopefully we will be able to resolve them
18 and the barrage will stop.

19 THE COURT: Well, the challenge that the Court has,
20 which I'm glad you see perhaps more clearly today based on the
21 conference with both sides, is that to the extent Ms. Boylan
22 will be called as a witness, if there's any truth to the
23 notion that she's involved in discussing with other
24 complainants what to say or discussions of the investigation
25 with other complainants, those will be ripe areas for

Proceedings

66

1 cross-examination.

2 MS. PERRY: Well, I do take issue with that and --

3 THE COURT: I don't think that's disproportionate.

4 MS. PERRY: Did Your Honor want to take that up now
5 or do you --

6 THE COURT: Please. You're here.

7 MS. PERRY: So, again, we had agreed to some limited
8 production that would go directly to Ms. Boylan's allegations.
9 So I do think if they were willing to accept that and walk
10 away from those other categories that we have argued over and
11 over and strenuously as possible, that they are not
12 appropriate and they are disproportionate, then I think we can
13 have a conversation. But the levels to which they're going to
14 impeach a non-party, has been found over and over in this
15 district to be too far. She's a nonparty.

16 THE COURT: This isn't just average impeachment of a
17 person who is like a bystander.

18 Mr. Licul is seeking to use these other victims and
19 complainants, as they are characterized in the papers, to
20 establish this hostile culture around Governor Cuomo. That's
21 not a sort of minor third-party witness.

22 MS. PERRY: But our point is that they then don't
23 have the right -- if Mr. Licul is going to press forward with
24 that theory, then they can cross-examine her about her
25 allegations and the voluminous public record that they have

1 and what she's willing to produce.

2 Do they get to ask about her sexual history and
3 about the reasons -- you know, about complaints that may have
4 been made about her allegedly at her place of work? We think
5 that is too far. So there are separate categories. You know,
6 we can go through them. We have tried to do that in our
7 papers.

8 THE COURT: You have your papers on those issues,
9 for sure.

10 The challenge, again, is to the extent that the
11 argument is that she has taken the public position that she
12 left due to the harassment and that's not true. Some of these
13 other categories are blurring into potential relevance for
14 impeachment purposes, aren't they?

15 MS. PERRY: I agree. I mean, there has been
16 discussions about boundaries here. They are boiling the
17 ocean. They are looking under every rock, and that is not
18 allowed under the law. There is not precedent for what they
19 are doing here. She is not a party. She's not a plaintiff
20 here. So, Ms. Glavin's statement, well, if she were, we could
21 do this, is not apropos here. So what are the boundaries
22 obviously is the challenge for Your Honor, that is in front of
23 Your Honor.

24 I think they could ask about that and they could
25 seek documents that go directly to that. But subpoenaing all

Proceedings

68

1 these additional third-parties for that really tests the
2 limits of what's allowed or goes well beyond those limits.

3 THE COURT: Fair enough. I understand your
4 argument.

5 I see Mr. Amer has arrived hopeful that his
6 conference will start at noon. It will not, Mr. Amer.

7 MR. AMER: I've been so advised.

8 THE COURT: Ms. Glavin, one minute, and then I want
9 to go to Mr. Capezza, Ms. Cohen and the other --

10 MS. GLAVIN: Sure.

11 One other point that I forgot to raise with Your
12 Honor with respect to Ms. Boylan, what we are interested in is
13 exploring the relationship with her superior at the Empire
14 State Development Corporation and we want that for three
15 reasons: One is it goes to the circumstances of her leaving
16 her employment, because they were both brought in and
17 counseled on it.

18 The second reason that it becomes relevant is
19 because when Lindsey Boylan went public with her allegations,
20 including one about claiming falsely that the Governor asked
21 her to play strip poker on an airplane and there were three or
22 four other people present, Howard Zemsky was on some flights
23 where Ms. Boylan may have been on, Howard Zemsky signed on to
24 a public statement in February of 2021 disputing what Ms.
25 Boylan said.

Proceedings

69

1 The same day that that public statement went out,
2 Ms. Boylan, who had been in a sexual relationship with Mr.
3 Zemsky, sent him a text message on a self-deleting application
4 called Confide, where she said to him, I can't wait to destroy
5 your life, you shit-follower. She made that relationship
6 relevant because she was threatening him as her allegations
7 were becoming public, when she was asking for an investigation
8 for not backing her up. She threatened a witness in the case.
9 And he's not the only witnessed that she threatened. There
10 were several others.

11 And one of the reasons why we need to explore these
12 is it goes to Lindsey Boylan's motive and intent in making
13 being the allegations.

14 Mr. Zemsky, after he got that threat, said oh, maybe
15 I heard something on the plane. And the funny part about it
16 was Lindsey Boylan said she didn't even think he was on the
17 plane.

18 THE COURT: Ms. Glavin, now I have to give Ms. Perry
19 one more minute, and then Ms. Perry, and then that is it on
20 this issue.

21 MS. PERRY: I think Ms. Glavin has proven my point.
22 She is going down a rabbit hole trying to re-litigate --
23 essentially to litigate these issues, but my client is not a
24 party and doesn't have to litigate whether or not she had this
25 alleged sexual relationship with Howard Zemsky. How does that

Proceedings

70

1 relate to the issues of whether or not Trooper 1 --

2 THE COURT: The more concerning question is whether
3 or not she threatened a witness, with all due respect, Ms.
4 Perry. Can you address that?

5 MS. PERRY: Of course our position is that she
6 didn't. But this really -- again, we are talking about, you
7 know, if all of this is allowed in, if there are no limits and
8 if the parties cannot follow Your Honor's, you know,
9 suggestion, I'll call it, you know, that they try and set
10 some, then we go down this hole, you know -- I mean, I don't
11 know how many rabbit holes we're going to have to go down,
12 because every single witness is going to have to fight tooth
13 and nail about motivations, bias, impeachment.

14 As Your Honor noted, you know, college records are
15 being sought, my client's phone records, which are different
16 than the phone records that have been discussed, because they
17 have nothing to do, you know, with anything other than they
18 just want to know who she's talking to and when. That is just
19 way too far.

20 Our main argument, we don't think this is relevant.
21 We've made that very clear. But this is so disproportionate.
22 And, then, of course, we have talked about the burden and
23 harassment, you know, all those other considerations under
24 Rule 45. But under Rule 26, it was not relevant, and Mr.
25 Cuomo's counsel has said that. They don't think any of these

Proceedings

71

1 allegations are relevant. They're trying to, you know, turn
2 all of this whole process on its head. And so that's the
3 issue.

4 THE COURT: They would like them to be precluded,
5 but because of the plaintiff's determination of how to plead
6 this case and Mr. Licul's presentation this morning, I think
7 it's very clear to you why they are seeking discovery.

8 (Continued on next page.)
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1 (Continuing.)

2 MS. PERRY: I do understand and that's the problem.
3 And, you know, we have had conversations with Mr. Licul about
4 that. We understand, you know, maybe there will be
5 conversations between the parties, maybe there can be some
6 narrowing. But we certainly understand that for now, all of
7 this, as much as it may hurt all of these complainants is
8 being kept in the case.

9 And so, we do still think a lot of it is not
10 relevant to Trooper 1 proving her allegation. My client never
11 met her, never talked to her, does not even know her identity.
12 So how she can, she who worked in a very different workplace,
13 you know, could possibly -- her allegations could really speak
14 to Trooper 1's allegations are beyond me.

15 But again, Your Honor, the proportionality one where
16 if the parties cannot agree on what the limits are, we would
17 ask that extremely reasonable ones that does not, you know,
18 put my client back in this very, very dark place that she had
19 to live in when she was being dragged through the mud the
20 first time around.

21 THE COURT: I appreciate your comments. Thank you.

22 All right, Mr. Capezza. Thank you.

23 MR. CAPEZZA: Your Honor, thank you for the
24 opportunity to address the Court. I represent State Entity
25 Employee Number 2.

1 To get very clear to the point, she wants nothing to
2 do with this, never asked for this, never asked to be included
3 in a Complaint.

4 She served her state in the Department of Health
5 during the pandemic. In and of itself, that would be an
6 exhausting experience. When you couple that with the
7 allegations that are memorialized in 200 pages of testimony
8 that's publicly available, the experience for her was
9 traumatizing.

10 She left public service to go home, frankly, to
11 heal, and she wants no part of this to be brought in.

12 That said, to the extent that the Court wants to
13 know if we would agree to release the transcript unredacted,
14 we will, provided that it doesn't get into any personal
15 information about her, her family, or her friends. Having sat
16 through that interview, I don't believe much has been
17 redacted, maybe just for personal references only.

18 It's important to note she's not only not party in
19 this case, she's not a party in any case. She never sued.
20 She never brought suit. She has no factual overlap with any
21 of the other victims as they relate to their victim
22 experiences. She has no factual overlap with any of the
23 allegations as they relate to Trooper 1, doesn't know
24 Trooper 1. She's a standalone who worked in the Department of
25 Health, had an experience with the Governor on one day during

1 a press conference, before and during that press conference.
2 That's what she testified to. And the Court -- if the Court
3 wants to release the unredacted report, I'm fine with that,
4 provided it doesn't make reference to conversations with her
5 husband or her friends, the personal aspects of which have
6 nothing to do with the events of Trooper 1.

7 We provided no documents to the parties because,
8 frankly, we weren't asked for documents. And I hesitate to
9 say that because I don't want to be served with a subpoena for
10 documents, but the fact is that she was served with two
11 subpoenas and to use the word retraumatized, that's exactly
12 what it is.

13 She went back. She went home. She went home to
14 heal. And for the last few years everything was fine, but
15 then all of a sudden this starts up. And she didn't ask to be
16 included in that Complaint. She's named in one paragraph in
17 that Complaint, nothing else. It seems to memorialize what's
18 already been said by way of her public testimony.

19 She has nothing to add to Trooper 1. She doesn't
20 know Trooper 1. She doesn't know any of the other victims or
21 their experiences. And so to be dragged into this is not
22 proportional to anything and it retraumatizes her.

23 If there are any other questions the Court has, I am
24 happy to answer them.

25 THE COURT: Thank you very much. I appreciate your

1 remarks.

2 Ms. Cohen, would you like to be heard on behalf of
3 Ms. Hinton?

4 MS. COHEN: Yes. Thank you, Your Honor.

5 So, Ms. Hinton, unlike some of the other
6 complainants, did not -- was not in the work environment for
7 the State. She was not in the perimeter around the Governor
8 in the workplace. She worked for the Governor thirty years
9 ago when he was at HUD. She was subpoenaed for documents and
10 testimony related to, purportedly, her support of other women
11 who came forward with what they endured, in terms of sexual
12 harassment by defendant Cuomo. She was publicly outspoken in
13 her support of those women. She came forward publicly and
14 there was a newspaper article in The Washington Post that she
15 had been touched by defendant Cuomo when she worked for him
16 thirty years ago in the federal government.

17 But as to Trooper 1's allegations, she doesn't know
18 Trooper 1. She doesn't know anything about the facts or
19 circumstances surrounding those allegations. She never met
20 Trooper 1. She never communicated to Trooper 1.

21 Nevertheless, Ms. Hinton did comply with the
22 document subpoena on her, at least in relevant part, in that
23 we have produced about a hundred pages of documents to
24 defendant Cuomo, which we understand has been shared with the
25 other defendants in this case.

1 She produced 50 pages of documents related to
2 Ms. Boylan, which consists primarily of texts and words of
3 support about Ms. Boylan's allegations, as well as help that
4 Ms. Hinton provided to Ms. Boylan in her job search because
5 she was unable to get any employment after she came forth
6 publicly.

7 Ms. Hinton produced more than thirty pages of
8 documents related to Ms. Bennett. Again, words of
9 encouragement to Ms. Bennett when Ms. Bennett came forward
10 with her allegations against defendant Cuomo, and also helped
11 with Ms. Bennett's job search.

12 A few pages of communications with Ms. Liss of the
13 same nature, and she produced calendar entries showing her
14 appointment to speak with investigators for the Attorney
15 General's report.

16 There are no other documents that are even arguably
17 relevant. Nevertheless, the subpoena had called for all
18 documents related to Ms. Hinton's conversation with the press,
19 all documents related to drafts of a book she wrote, and other
20 documents that have no relevance to the purported reason for
21 the subpoena, which is to the extent the three complainants,
22 Ms. Boylan, Ms. Bennett and Ms. Liss, spoke to Ms. Hinton
23 about their allegations and said something different to
24 Ms. Hinton than that they would -- what they would testify
25 about in the hypothetical situation where they were allowed to

1 be called as witnesses in Trooper 1's trial, that then
2 Ms. Hinton could be called as a witness to impeach the
3 credibility of those two women.

4 Ms. Hinton is a nonparty here. There is really
5 nothing more Ms. Hinton can provide. We tried to be -- we
6 tried to provide the documents we thought were tangentially
7 and arguably relevant. We produced those. Those documents
8 were way beyond what was produced to the Attorney General's
9 office.

10 I did not represent Ms. Hinton when she went and
11 spoke with the investigator with the Attorney General's
12 office. I don't believe she produced any documents to the
13 Attorney General, but if there are such documents, I, at
14 least, have not seen them and Ms. Hinton no longer possesses
15 them.

16 To answer Your Honor's questions, we have nothing
17 more that we are willing to produce as even potentially
18 relevant to this litigation.

19 We were also subpoenaed for a deposition, which
20 given the review of the documents we did produce, there is
21 absolutely no relevance and no reason to be taking
22 Ms. Hinton's deposition, other than to continue to harass
23 Ms. Hinton who has been a publicly outspoken supporter of
24 women who have come forward with Mr. Cuomo's behavior toward
25 them, as well as the incident that she has publicly disclosed

1 against her that occurred, again, thirty years ago.

2 To the last part of Your Honor's question, would we
3 agree to the public release of whatever information Ms. Hinton
4 provided to the Attorney General, as well as how an unredacted
5 or less redacted portion of her interview with the Attorney
6 General's office, subject to discussing it with my client and
7 being able to review it myself, we would consider that.

8 I would also say that as to the witnesses named in
9 the 26(a) disclosure, Ms. Hinton is not individually one of
10 those witnesses. She is only there by -- her name is not
11 there in the 26(a) disclosures, other than number 18, which
12 the plaintiff referred to all witnesses named or interviewed
13 by the Attorney General, and Ms. Hinton was interviewed by the
14 Attorney General.

15 THE COURT: Thank you very much, Ms. Cohen.

16 MS. COHEN: Thank you.

17 THE COURT: Ms. Wang, would you like to be hard?

18 MS. WANG: Yes. Thank you, Your Honor.

19 As I said earlier, I represent Ms. Virginia
20 Limmiatis and Alyssa McGrath.

21 Ms. Limmiatis had a single incident of harassment by
22 then Governor Cuomo in May 2017. Ms. McGrath worked actually
23 for the executive office, but the then Governor pulled her and
24 others in because of what they looked like and because they're
25 women to work closely with him, and in that regard between

1 2018 and approximately early 2020 experienced some of the
2 sexual harassment that has been written about and is
3 documented in the AG report.

4 Both are full-time working individuals. One is a
5 single mother of a small child. They have not brought
6 lawsuits. They are not parties to any lawsuits. They are
7 nonparties with few resources and very limited time. Both
8 testified in the AG matter, and their depositions are actually
9 in the public domain on the public website of the AG.

10 We have tried to work with defendants and we
11 received first document and deposition subpoenas, I believe
12 back in April, and we produced hundreds of pages of documents.
13 We produced everything that we gave to the AG. And I believe
14 we gave a bit more than that, in fact. And to the extent that
15 there was more being sought, we have tried to confer
16 repeatedly with defense counsel on those issues.

17 Specifically, with respect to the lack of boundaries that are
18 being drawn, the types of requests that are being asked, which
19 we're always being told is relevant, but then when we ask why
20 it's relevant, it's simply, the answer is: Well, you were in
21 the Complaint, that's why it's relevant. For example, all --
22 any and all communications ever about any allegation against
23 the Governor or anything about the AG has to be produced,
24 which would mean looking through thousands of texts for
25 amorphous and unclear terms to see whether somebody sought out

1 Virginia Limmiatis and expressed support for her. You know,
2 anything at all about these allegations.

3 I just want to point out that at some point in the
4 summer of 2021, Ms. Glavin held press conferences speaking at
5 length disparaging both of my clients. Ms. Limmiatis, showing
6 pictures of Ms. Limmiatis smiling or discussing Ms. McGrath
7 and her then ex-husband or her soon-to-be ex-husband. They
8 were in the middle of a divorce. Ms. Glavin held press
9 conferences disparaging my clients.

10 So, in theory, I believe what defendants would be
11 seeking is if somebody sent a text to Ms. Limmiatis saying:
12 Do you see what they're doing to you? And she said: Oh, my
13 God. We would have to go and look for those texts,
14 presumably, and produce them. Those are the types of things
15 that they're asking for. They want us to look through all of
16 their texts for anything regarding Mr. Cuomo or the AG,
17 regardless of whether it has anything to do with their
18 credibility or not, and there is no limitation on that at all.

19 We don't -- we didn't have a problem producing those
20 documents and even looking in the limited fashion for
21 additional documents, but that's not -- there's been no limit
22 to additional requests on documents for Ms. Limmiatis or
23 Ms. McGrath. And, in fact, after having two meet-and-confers
24 with defense counsel, they've even gone backwards on some of
25 the limitations. In the first meet-and-confer in July, there

1 seemed to be an indication that they really just wanted
2 substantive conversations about the allegations. Later on,
3 they said that no, we want everything, any -- any
4 communication, even if some stranger or a fourth grade -- a
5 fourth-grade classmate said Thank you for coming forward,
6 we -- we want you to look for those and find out if they're --
7 if they're substantive.

8 That's just not proportionate to a nonparty. We
9 shouldn't have to look through thousands of texts.

10 Ms. Glavin has said that Ms. McGrath is in a
11 different place because her position in the Governor's office
12 at some point was in a position of being able to see more of
13 the working environment, which is true. But, for instance, in
14 that scenario, what the -- what the discovery that's being
15 sought from Ms. McGrath is really about Ms. Commisso, who is
16 another nonparty, Brittany Commisso. Brittany Commisso and
17 Alyssa McGrath were extraordinarily close friends who talked
18 about everything all the time, and very little about the
19 Governor, in fact; much more just about being best friends.
20 And in this -- because of their relationship, Ms. Glavin is
21 now seeking things like all photographs that Ms. McGrath took
22 of her birthday party on March 6th, 2021, because, apparently,
23 the birthday photos of Ms. McGrath are relevant to see, I
24 don't know what. Nothing happened there about -- allegedly,
25 Ms. Commisso may have spoken to somebody about what Mr. Cuomo

1 did to her when she was away from the party, but Ms. Glavin
2 wants every photo from that evening.

3 This is -- this is the definition of a fishing
4 expedition and of harassment. It has nothing to do with
5 Trooper 1 at this point. It doesn't even, in my view, have
6 anything to do with credibility of Ms. McGrath. It is just
7 harassing a nonparty, who is a working single mom, who is
8 trying to get on with her life and not to have to think about
9 the defendant anymore.

10 With respect to your specific questions, I believe
11 there wouldn't be a problem with respect to redactions. I
12 would just ask the same courtesy as everyone else, which is I
13 just need to be reminded of what they are before I agree and
14 to talk to my client. But I don't think there would be any
15 problem with that.

16 And I presume they would be subject to the
17 protective order in this case, to the extent there's any
18 private issue or private information.

19 I do want to just add one other thing with respect
20 to the depositions.

21 Ms. Glavin indicated that she would depose -- she
22 would agree to depose Ms. Limmiatis for, quote, only four
23 hours, but that Ms. McGrath has to be the full seven hours.
24 And that Ms. Limmiatis could be done by Zoom, but Ms. McGrath
25 has to be done in person.

1 Once again, even for -- even for Ms. Limmiatis to be
2 subjected to four hours of deposition testimony for a single
3 incident from May 2017 is not reasonable. I mean there's
4 plenty of caselaw, you know, indicating that proportionality
5 for a single incident in 2017, that shouldn't even be four
6 hours. But then on top of it, if you're willing to take her
7 deposition in a limited fashion by Zoom, why can't you take
8 another -- the other nonparty's witness testimony by Zoom and
9 why can't you also, likewise, limit it, limit it to a specific
10 number of hours. It's just, it's just too much.

11 And then on top of it, after all of these
12 meet-and-confers, we have then gotten more deposition -- more
13 subpoenas from the other nonparties. So, which we have just
14 received and we have to start looking at as well.

15 So, we ask that Your Honor please place limits on
16 this, on this fishing expedition really.

17 Thank you.

18 THE COURT: Appreciate that, thank you very much.

19 Mr. Eisenberg on behalf of Ms. Bennett.

20 Do you represent her in the Southern District case
21 as well, sir?

22 MR. EISENBERG: Yes, we do.

23 THE COURT: Okay. Thank you.

24 A couple of questions for you that are different
25 than the other parties, given that there is an S.D.N.Y. case

1 pending as to her.

2 What is your view on the question that I raised
3 prior to defendants as to whether or not the discovery
4 disputes pertaining to Ms. Bennett could be sort of resolved
5 in the Southern District case?

6 Do we need to resolve them separately here?

7 And also, is there a protective order in that case
8 or can the information be used in both cases?

9 What is the State of play, from your perspective, on
10 behalf of Ms. Bennett with regard to those questions?

11 MR. EISENBERG: First, let me thank the Court for
12 its sensitivity to the potential conflicting rulings in both
13 matters.

14 There is presently a protective order in place that
15 is being renegotiated. We actually have a meet-and-confer
16 this Thursday regarding some of the alterations or edits to
17 the protective order.

18 As far as whether that protective order would adhere
19 to what happens in this court, I can't tell this Court what to
20 do, but it is imperative that my client's confidentiality and
21 designated confidential documentation be maintained. And we
22 would ask that the protective order that we eventually enter
23 into, in addition to the one that's already so ordered by
24 Judge Broderick, be adhered to.

25 With regard to the discovery disputes, our case

1 isn't as old as this one. So, we are earlier in the process,
2 though, we are -- we have served discovery and we have
3 received discovery requests. We have filed or tendered
4 objections from both sides. We are in the process of trying
5 to get documents served and move things along.

6 And I, too, have not yelled at Ms. Glavin.

7 And, you know, we're just trying to make the things
8 work. We are particularly concerned that doing discovery in
9 this Trooper 1 matter will have an adverse impact on our
10 ability to do things smoothly, efficiently, in our own case.
11 And we would ask the sensitivity to potential conflicting
12 rulings be maintained.

13 With regard to the status of the protective order
14 here and any documentation that is tendered, I have not
15 honestly seen the protective order here, but we are concerned
16 about the use of documents in this case.

17 Surely, we will be eminently reasonable if things
18 make sense to be utilized in this case by either Ms. Glavin or
19 Governor Cuomo's counsel and Trooper 1's counsel. We will
20 work with them to make things work, but there are certain
21 things in this case that make no sense to us.

22 Like many of the others, my client doesn't know
23 Trooper 1, didn't interact with Trooper 1, didn't observe any
24 of the allegations with regard to Trooper 1. And in her
25 listing of witnesses with information, it is notable that her

1 information is specifically related to her experiences, not
2 Trooper 1's.

3 With regard to the -- Mr. Licul made some reference
4 as to why Ms. DeRosa and Ms. Bennett -- other parties are
5 named as parties here. My client has nothing whatsoever to do
6 with them, and she shouldn't be burdened with a deposition and
7 document requests by Ms. DeRosa and Mr. Azzopardi's counsel.

8 When asked: Aren't you going to depose her? As
9 Ms. DeRosa is a named defendant in our Southern District case,
10 the response was: I'm not her counsel in that case. But it
11 is not counsel that governs, it is the client. And, of
12 course, Ms. DeRosa will depose Ms. Bennett in our Southern
13 District case, as we will depose Ms. DeRosa.

14 With regard to the Hamilton College frolic and
15 detour. We feel strongly that that is nothing but a frolic
16 and detour. It really is inapposite, certainly has no role
17 whatsoever in Trooper 1's case. We think it has limited role
18 in our own case. We are in the process of trying to work out
19 parameters of a protective order that would govern the receipt
20 of documentation that is provided by Hamilton College, if any.
21 And that is something that is on the table. As I said, we'll
22 be speaking about that later this week. We think Hamilton
23 College has no role whatsoever to play in the case in the
24 Eastern District.

25 THE COURT: So --

1 MR. EISENBERG: If the Court has any other
2 questions, I'm happy to answer them.

3 THE COURT: So, the questions I had for all include
4 your position on disclosure of unredacted transcripts from the
5 AG's Office and/or interview memos and notes. Not previewing
6 any ruling, Mr. Eisenberg, I just asked everybody that
7 question to set the table for your conference.

8 MR. EISENBERG: With regard to the unredacted
9 testimony, I don't think we have a problem with it. I'd love
10 to see it before we agree.

11 With regard to interview notes, similarly an
12 opportunity to review those documents would inform our ability
13 to answer the question certainly speaking to our client would
14 do so as well.

15 In principle, I don't think we have a problem with
16 it, presuming that these items are, again, subject to a
17 protective order. We are concerned that our client will be
18 publicly shamed and -- and her allegations will be discredited
19 in press conferences, as they have been previously, we want to
20 minimize the harm to her.

21 THE COURT: Thank you very much.

22 MR. EISENBERG: Thank you.

23 THE COURT: Mr. Najmi.

24 MR. NAJMI: Yes, thank you. Thank you, Your Honor.

25 I represent Alessandra Biaggi, who, as you know,

1 Your Honor, was a state senator from 2019 to 2022.

2 She received a subpoena from Governor Cuomo's
3 attorneys. And what's interesting is my client is separate
4 and apart from -- can be distinguished from all the other
5 third-party -- the nonparty witnesses, in that she's never
6 made an allegation of sexual harassment against the Governor.
7 She stated that publicly. And she's not mentioned in the
8 plaintiff's Complaint at all. And so, there is certainly a
9 glaring relevance issue there that -- with respect to the
10 subpoena on Ms. Biaggi.

11 We did have two meet-and-confers with defendant
12 Cuomo's counsel. I also did not yell at anybody.

13 We stated that with respect to the time periods in
14 which she's a senator, you know, if any communications are
15 with respect to the legislative privilege, in that they're
16 communicating to her really because she's a state senator.
17 She is an outspoken advocate for women when she was in the
18 chamber for workplace issues. In fact, after this entire
19 incident with the Governor, she voted on a legislative package
20 that included reforms to workplace harassment issues and --
21 and workplace issues that came out of this entire thing. And
22 she -- and we are citing that privilege.

23 We did respond to the subpoena by giving written
24 objections to defendant Cuomo's counsel. And we are citing
25 the legislative privilege for the entire time that she is a

1 senator. And, Your Honor, with respect to -- you know, so we
2 have not handed over any documents or correspondences.

3 And with respect to the AG's interview notes -- our
4 client was, in fact, interviewed by the AG -- we would want to
5 review those materials and discuss it with our client.

6 One of the questions that we had, Your Honor, was,
7 you know, we -- we would anticipate to file a motion to quash.
8 We, obviously, didn't want to do it before this conference.
9 Part of that motion would include relevance arguments that are
10 already the subject, identical arguments that are subject to
11 motions that are already pending before the Court. So we
12 would want to know whether it would be prudent for us to wait
13 until those are resolved. And I did see that other counsel
14 did seek leave from Your Honor to file a motion to quash, but
15 I don't know that that's part of the rules.

16 THE COURT: So, most people have just been filing
17 motions with no pre-motion conference letter of any kind. And
18 I haven't sort of brought down the hammer on anybody because
19 we are dealing with a lot of third-parties. These issues are
20 fraught.

21 And I am sensitive to everybody's interest in being
22 heard without requiring third-parties, in particular, to jump
23 through a bunch of procedural hoops. So, to the extent I
24 haven't been like: You did not get permission to file this
25 motion; there are reasons that I have been, basically,

1 privately waiving my personal rules.

2 So, with regard to the legislative privilege issues
3 that you mentioned, Mr. Najmi, as I am sure you are aware, the
4 Court previously had an occasion to address legislative
5 privilege in this very case. And, of course, the legislative
6 privilege is not an absolute privilege as interpreted in the
7 federal courts for state legislators.

8 So, to the extent your position is that some of the
9 messages or reach out that she received from persons who felt
10 affected by the Governor's actions was part of her information
11 gathering in furtherance of legislative efforts, I understand
12 there may well be a privilege that attaches.

13 If, however, she's also engaged in constituent
14 services discussing what happened with people in a more
15 constituent-related capacity, it may not be covered.

16 And this is going to be a very fact, it would be a
17 very fact-intensive analysis potentially. So, if you are
18 asserting legislative privilege, you will, of course, need to
19 provide a detailed privilege log --

20 MR. NAJMI: Yes.

21 THE COURT: -- not a categorical one --

22 MR. NAJMI: Okay.

23 THE COURT: -- to Governor Cuomo's people in an
24 effort to meet and confer and meaningfully narrow those
25 issues.

1 You guys have small benefit, in that I previously
2 had to review the legislative privileges of applicability in
3 this very case, but the Assembly Judiciary Committee is very
4 differently situated than an individual legislator in terms of
5 what they were seeking in the context of that subpoena being
6 very different than an individual legislator's actions that
7 may or may not be covered in full.

8 So, a detailed non-categorical privileged log would
9 need to be prepared. And I don't want to volunteer it because
10 I want the parties to try to work it out as much as possible,
11 but it could come to privilege review, which is, of course, a
12 very, very cumbersome and slow process that, again, no one
13 wants to deal with.

14 So, I encourage you to meet-and-confer -- and I am
15 stressing this to Governor Cuomo's people as well -- be
16 reasonable in terms of what you are seeking from Ms. Biaggi.
17 If she is, in fact, gathering information in furtherance of
18 legislation, you know what the outcome is going to be and you
19 can save yourselves hundreds of pages of briefing.

20 MS. GLAVIN: Yes.

21 THE COURT: All right.

22 MS. GLAVIN: Judge, just on that one point.

23 One thing that I do think is relevant is that
24 Ms. Biaggi worked in the executive chamber for Governor Cuomo
25 in 2019. And that is the reason that the Attorney General's

1 office interviewed her to discuss her experience there. And
2 she also overlapped and worked during the same time as
3 Kaitlin, whose last name I am not allowed to use. I object to
4 that. As well as Lindsey Boylan. And they contacted, as we
5 understand it, Ms. Biaggi to talk with her about her
6 experiences and whether she'd come forward.

7 And, in fact, Ms. Biaggi gave an interview to a
8 publication in which Ms. Boylan and Kaitlin also gave
9 interviews. And so, to the extent she knows them, was
10 communicating with them about their experiences, which has
11 nothing to do, to the extent she worked with them and was
12 discussing with them coming forward and herself coming
13 forward, she was interviewed not as a legislator, but as a
14 witness.

15 THE COURT: I understand.

16 So, Mr. Najmi, additional points for your discussion
17 with Governor Cuomo in terms of the meet-and-confer.

18 If she was, in fact, having discussions with regard
19 to positioning for press purposes, how to present information
20 in a way that could be, I am just taking Devil's advocate
21 here, detrimental to Governor Cuomo and is counseling -- they
22 are counseling each other on what they are going to say, it
23 could be that that information is arguably relevant. It might
24 be disproportionate -- and I am looking at you, Ms. Glavin --
25 but it certainly may be relevant.

1 So, please, be very granular in your analysis of
2 what information Ms. Biaggi may have in your conversation with
3 Mr. Cuomo.

4 MR. NAJMI: Your Honor, I just have one correction.

5 She worked in the, Ms. Biaggi worked in the
6 executive chamber not in 2019. She was a state senator in
7 2019.

8 MS. GLAVIN: 2017.

9 MR. NAJMI: She worked in 2017 up until middle of
10 2018 before she left to run her campaign.

11 THE COURT: Thank you.

12 MR. NAJMI: I understand everything you said, Your
13 Honor, and we will confer further with defendant's counsel.

14 THE COURT: Thank you very much. I appreciate it.
15 All right, and I believe we have Ms. Salzman as
16 well.

17 MS. SALZMAN: Thank you, Your Honor.

18 Thank you, Your Honor. As mentioned, we represent
19 nonparty Kaitlin. And Kaitlin is also not a plaintiff in this
20 or in any case. She also chose not to sue.

21 She worked in the executive chamber for one year
22 from 2017 to early 2018. During that period of time
23 Trooper 1, it is our understanding, was not employed in the
24 PSU. Certainly, Kaitlin did not know Trooper 1, has never
25 communicated with her and has never communicated about her.

1 In 2018 Kaitlin left the executive chamber. Over
2 three years later, in 2021, she was subpoenaed by the Attorney
3 General to provide documents relevant to their investigation
4 into the now former Governor. She complied. We produced
5 almost 250 pages of documents to the Attorney General.

6 And to answer your first question, Your Honor, every
7 single one of those pages has been turned over to the defense
8 in this case for many months now.

9 Two-and-a-half years later, now, in 2023, the
10 defense has subpoenaed her in this case. There is no
11 allegation by the Attorney General's office, or by the
12 defendants in this case, that Kaitlin's production to the
13 Office of the Attorney General was in any way incomplete. I
14 heard some specific examples from Ms. Glavin today about other
15 nonparties, that their production to the OAG had gaps or holes
16 in it.

17 I have asked Ms. Glavin repeatedly: Are you saying
18 that Kaitlin's production to the AG, and now to you, is
19 incomplete in some way? Point me to those gaps. Maybe we can
20 fill them. That is what a meet-and-confer is supposed to be
21 about. Not a single gap or hole was identified.

22 Instead, what Ms. Glavin told me they were focused
23 on was: What happened after your production to the AG's
24 Office in May 2021? Were there documents that post date
25 May 2021, which Kaitlin received or exchanged with others that

1 might be relevant to the Trooper 1 case?

2 Okay. That, again, is something I think we can
3 meet-and-confer about. And we did meet-and-confer with them,
4 Your Honor. I had the same thinking that Your Honor
5 suggested, let's start with the OAG production and then point
6 me, Defense Counsel, to some specific examples of what else
7 Kaitlin might have that would be relevant and proportionate to
8 the Trooper 1 case.

9 But again and again, over the course of more than
10 half a dozen meet-and-confers, Your Honor, for a nonparty who
11 does not have any resources to be engaged in this process,
12 again and again I was met with defense counsel saying things
13 like: You must comply with the subpoena as drafted. Your
14 client has relevant discovery to the claims and allegations in
15 this case. Boilerplate, in other words.

16 Finally, in August, in our penultimate
17 meet-and-confer with Ms. Glavin, she said: Well, what we're
18 really interested in is communications between Kaitlin and the
19 other AG complainants after May 2021.

20 Finally, I said, this is something concrete we can
21 go and look for.

22 Like Ms. Wang explained, my client, because she was
23 named in the OAG report, received a lot of text messages and
24 outreach from friends and family when that report became
25 public and garnered a lot of public attention of people

1 reaching out to her like: Oh, my God, I'm so sad to hear what
2 happened to you. Are you okay? How are you coping? How have
3 things been?

4 Trolling through all of that is incredibly
5 burdensome and disproportionate to the needs of the case. And
6 Ms. Glavin acknowledged that. She said: We don't want that
7 kind of communication, we want communications between Kaitlin
8 and Lindsey Boylan, Charlotte Bennett, and the other
9 complainants in the AG report.

10 The very same day I responded to Ms. Glavin that
11 Kaitlin has no such communications after May 2021, except some
12 text messages with Lindsey Boylan. And I am aware from the
13 docket in this case that Ms. Boylan has made a motion to quash
14 and it was already pending in August.

15 So I said to Ms. Glavin: I can't backdoor around a
16 pending motion to quash and a forthcoming ruling from the
17 Court. If Your Honor says Ms. Boylan's motion to quash is
18 granted, you can't get those communications from Kaitlin. If
19 Your Honor says that the motion to quash is denied and those
20 communications are discoverable, we will produce them.

21 But beyond communications with other AG
22 complainants, the defense in this case has never been able to
23 identify with any granularity, with any specificity, what else
24 they could possibly want from Kaitlin. And that continues to
25 this very day. And each time we tried to use a

1 meet-and-confer to narrow the scope of the subpoena, to
2 understand what they were really looking for, to try to
3 address it, they would renege on what they said in the
4 meet-and-confer.

5 So, Ms. Glavin wrote me an e-mail on August 17th.
6 She wrote it to me saying: What we want before your client's
7 deposition are her communications with the other complainants.

8 Once I said: We have nothing, except these messages
9 with Ms. Boylan, suddenly that was no longer the agreement,
10 they wanted more. But, again, no specificity as to what.

11 So what have we given? Everything we gave the AG.

12 What are would he prepared to give? What they've
13 asked for. Communications with the other complainants that we
14 have, which is only Ms. Boylan, once the Court has ruled on
15 Ms. Boylan's motion to quash. We have nothing else that is
16 relevant, much less proportionate to the allegations in this
17 case.

18 In terms of Your Honor's -- and I should mention one
19 other thing, Your Honor.

20 After all these many meet-and-confers with us, I
21 learn on the same day that Ms. Glavin tells me all she wants
22 is communications between us and the other AG complainants, on
23 that same day I learn that she has subpoenaed Verizon for
24 three-and-a-half years of my client's phone records and all
25 her account information. I asked Ms. Glavin in writing, this

1 is Exhibit 11 to her declaration: How could that possibly be
2 relevant and proportionate to the Trooper 1 case? There's not
3 a single allegation in this case that my client's phone
4 records have anything to do with anything.

5 She said, boilerplate again: They're relevant to
6 the claims and allegations in this case.

7 Not once in over half a dozen meet-and-confers did
8 the defense in this case tell me: We need phone records
9 because there was this call made on this date and we're
10 entitled to know if it happened or not. Right. Had that
11 happened, we could have taken that under advisement, gone and
12 looked at the phone records, produced some redacted phone
13 records if that was truly an issue in this case. They never
14 mentioned phone records to me once, much less given me an
15 opportunity to consider are there actually phone records we
16 have that might be relevant and proportionate to this case.

17 So, again, that subpoena, Your Honor,
18 three-and-a-half years of a nonparty's cell phone records when
19 they can't tell me a single phone call is relevant and
20 proportionate to there case, it's been unlike any
21 meet-and-confer process I have ever seen, as a plaintiff, as a
22 defendant or as a nonparty.

23 So, that subpoena, in our view, Your Honor, should
24 be quashed. And that is the subject of motion practice that
25 is going on now between us and Governor Cuomo, and we are sort

1 of in the midst of that briefing.

2 In terms of Your Honor's question about releasing
3 the OAG interview memos. I have not seen those. We do not
4 have them. I don't know what they contain.

5 In terms of Kaitlin's deposition transcript, which,
6 of course, the Governor has, there the redactions are two
7 kinds, Your Honor.

8 The first is what Your Honor alluded to, the names
9 of other witnesses. And there we have no objection to
10 removing the redactions from the names of other state
11 employees. I don't represent those employees. I don't
12 represent the Office of the Attorney General. They may have a
13 different view, but from our perspective that's not the
14 sensitive or confidential matter for Kaitlin.

15 What is confidential, however, are the other set of
16 redactions in the AG's deposition. And those consist of
17 redactions to Kaitlin's full name, which we have never made
18 public. The only person who has ever publicized that is
19 defendant Cuomo, himself.

20 And second, other personal information about her.
21 Her work history before she worked for Governor Cuomo; a
22 personal matter between her and a romantic partner in her past
23 that came up when she was asked to explain what she thought
24 sexual harassment was; things like that, which are extremely
25 personal, extremely sensitive, and have no relevance to a

Proceedings

100

1 hostile work environment while working for Governor Cuomo.
2 Those redactions we do believe should remain in place. And we
3 would certainly want the protections of the confidentiality
4 order in this case to remain in place and continue to protect
5 Kaitlin's name, unless and until the defense makes a motion,
6 as they are entitled to do, under the confidentiality order,
7 to lift that designation. In which case, we'll respond. And
8 we can tee that issue up for Your Honor. But as of now, her
9 name and her identifying information is confidential under the
10 confidentiality order.

11 THE COURT: Agreed.

12 So, thank you for that.

13 MS. GLAVIN: May I just be heard briefly?

14 THE COURT: Ms. Glavin, it is 12:30. Mr. Amer is
15 here. I do not have the bulk of the afternoon available for
16 this case. So, I do need to turn to some other matters.

17 How much time are you seeking?

18 MS. GLAVIN: One minute.

19 THE COURT: Okay.

20 MS. GLAVIN: Your Honor, with respect to Kaitlin's
21 counsel's recitation of the meet-and-confers, I couldn't
22 disagree more about what happened. We have our reply papers
23 due on the motion, and we will layout the recitation. For
24 each of those calls, I had witnesses on those calls. We
25 couldn't even get them to agree to provide to us what they

Proceedings

101

1 produced to the AG.

2 With respect --

3 THE COURT: Are you saying you don't have it?

4 MS. GLAVIN: We now do. But after the first two
5 meet-and-confers, no, they wouldn't even give --

6 THE COURT: But you now have what was produced to
7 the AG?

8 MS. GLAVIN: To the AG.

9 Secondly, with respect to the claim that there was
10 any reneging, there wasn't. Kaitlin's deposition was coming
11 up and we had no documents. And so what I asked was: Let's
12 start with this, can you please produce, at least, what the
13 communications were with complainants? And we can revisit the
14 stuff at a later date. Because we wanted to get something
15 before that deposition because we had no documents.

16 We tried to be reasonable throughout this. When we
17 asked, we were repeatedly asked by Kaitlin's counsel: Well,
18 tell me what's relevant.

19 And we're like: Do you have responsive documents?
20 Have you talked to your client about who she may have had
21 discussions with? And let's start from there.

22 We couldn't even get that.

23 But that will be in my papers. But I don't want the
24 Court to think we went into these meet-and-confers and at
25 every point it was: Why am I producing this?

Proceedings

102

1 And we would keep asking: Well, what do you have?
2 And then let's work from there.

3 It will be in my papers.

4 THE COURT: This is part of the reason, we were
5 joking about this before, but this is part of the reason
6 motion-to-compel practice is terribly time intensive and
7 burdensome for all.

8 MS. GLAVIN: Yes.

9 THE COURT: You guys have starkly different
10 recollections of what happened in these meet-and-confers.

11 I do not want either of you sitting in the witness
12 box telling me what happened in the meet-and-confer. I do not
13 want to look backward. I want to look forward and I want to
14 find solutions, and I want to find some guide rails because
15 this, as we know, is off the rails.

16 So --

17 MS. FOTI: I'm sorry. Can I just say something?

18 THE COURT: Yes, absolutely, Ms. Foti.

19 MS. FOTI: The only thing I want to say, Your Honor,
20 is there's been a lot of comments about Governor Cuomo's
21 subpoenas and the discussions between the parties and Governor
22 Cuomo's counsel, which I think indicates that we really are a
23 third wheel. I'm not certain why we're here, but we have been
24 dragged in here.

25 And I cannot take representations from the various

1 counsel that they don't have anything to say about my client
2 as a basis to not go forward with their testimony.

3 I think it's very clear that we still need their
4 testimony if we are continuing to be in the case and if
5 Mr. Licul continues to insist that whatever those other
6 individuals have to say about their hostile work environment
7 somehow implicates Ms. DeRosa and/or Mr. Azzopardi, although I
8 appreciate Mr. Azzopardi is not really part of the case except
9 for a tweet.

10 And just on that, to correct the record, the tweet
11 Mr. Azzopardi put out was about the Wigdor firm. It was not
12 about the plaintiff, it was about the Wigdor firm, calling
13 them ambulance chasers saying they extorted -- they were
14 extortionists, not about the plaintiff.

15 Thank you.

16 THE COURT: Thank you.

17 And thank you, Ms. Salzman. I look forward to
18 receiving all of the briefing.

19 So, obviously, we've been at it for quite a while.
20 I am assuming that people might need a short break. So, if we
21 could take five and then start the argument involving the
22 Office of Attorney General.

23 Please reconvene by 12:35.

24 (Recess taken.)

25 (Matter adjourned.)

<p>1</p> <p>1 [59] - 1:4, 1:24, 4:5, 4:11, 4:13, 6:17, 7:1, 7:3, 7:8, 8:3, 8:7, 8:19, 8:22, 9:11, 11:9, 17:1, 18:4, 20:12, 20:15, 20:16, 21:1, 21:25, 22:3, 22:7, 22:11, 24:15, 24:17, 34:24, 35:7, 35:13, 41:9, 45:19, 45:23, 46:6, 46:9, 48:15, 70:1, 72:10, 73:23, 73:24, 74:6, 74:19, 74:20, 75:18, 75:20, 82:5, 85:9, 85:23, 85:24, 93:23, 93:24, 95:1, 95:8, 98:2</p> <p>1's [16] - 8:1, 8:18, 10:14, 19:13, 20:10, 21:11, 21:16, 21:19, 34:8, 61:6, 72:14, 75:17, 77:1, 85:19, 86:2, 86:17</p> <p>10 [5] - 18:1, 19:4, 19:16, 19:25, 27:6</p> <p>10-deposition [1] - 16:8</p> <p>10003 [1] - 1:24</p> <p>10004 [2] - 2:6, 2:24</p> <p>10017 [1] - 2:12</p> <p>10019 [3] - 2:2, 2:21, 3:3</p> <p>10028 [1] - 2:15</p> <p>10279 [1] - 3:6</p> <p>11 [4] - 17:1, 44:23, 61:11, 98:1</p> <p>11201 [1] - 3:11</p> <p>11:00 [1] - 1:8</p> <p>12211 [1] - 2:18</p> <p>12:00 [2] - 38:1, 38:5</p> <p>12:30 [1] - 100:14</p> <p>12:35 [1] - 103:23</p> <p>14534 [1] - 2:9</p> <p>15 [2] - 27:6, 61:16</p> <p>156 [1] - 2:2</p> <p>157 [1] - 2:15</p> <p>16th [1] - 10:3</p> <p>17th [1] - 97:5</p> <p>18 [1] - 78:11</p>	<p>23rd [2] - 18:11, 19:1</p> <p>25 [7] - 5:17, 9:2, 31:8, 31:9, 31:12, 39:4, 39:8</p> <p>250 [2] - 2:21, 94:5</p> <p>26 [4] - 1:7, 23:4, 60:9, 70:24</p> <p>26(a) [2] - 78:9, 78:11</p> <p>26(a)1 [2] - 7:14, 10:9</p> <p>26th [1] - 40:10</p> <p>2704 [1] - 3:5</p> <p>27th [1] - 18:23</p> <p>3</p> <p>30 [1] - 2:18</p> <p>32 [1] - 2:24</p> <p>36 [2] - 23:3, 27:2</p> <p>4</p> <p>403 [5] - 10:23, 12:3, 51:9, 52:1</p> <p>404(b) [3] - 10:22, 12:3, 47:23</p> <p>412 [1] - 13:7</p> <p>45 [1] - 70:24</p> <p>5</p> <p>50 [3] - 9:11, 12:9, 76:1</p> <p>50s [1] - 55:19</p> <p>55,000 [1] - 22:14</p> <p>55th [1] - 2:21</p> <p>565 [1] - 2:12</p> <p>56th [1] - 2:2</p> <p>6</p> <p>613-2272 [1] - 3:11</p> <p>6th [1] - 81:22</p> <p>7</p> <p>718 [1] - 3:11</p> <p>73 [2] - 18:1, 23:1</p> <p>75 [1] - 3:2</p> <p>8</p> <p>803(8) [4] - 50:3, 51:3, 51:9, 53:14</p> <p>803(8) [2] - 49:18, 49:24</p> <p>803(B) [1] - 53:19</p> <p>85 [1] - 1:24</p> <p>86th [1] - 2:15</p> <p>9</p> <p>90 [1] - 2:5</p> <p>99 [1] - 2:8</p> <p>A</p> <p>a.m [1] - 1:8</p>	<p>ABADY [1] - 3:2</p> <p>abetted [2] - 41:23, 46:7</p> <p>abetting [1] - 45:20</p> <p>abettor [1] - 45:22</p> <p>abettors [1] - 42:6</p> <p>ability [6] - 16:16, 26:19, 31:21, 34:8, 85:10, 87:12</p> <p>able [11] - 18:10, 18:15, 19:17, 24:12, 28:20, 33:24, 42:11, 65:17, 78:7, 81:12, 96:22</p> <p>Abramowitz [1] - 5:1</p> <p>ABRAMOWITZ [1] - 2:11</p> <p>absence [1] - 32:9</p> <p>absolute [1] - 90:6</p> <p>absolutely [2] - 77:21, 102:18</p> <p>accept [1] - 66:9</p> <p>access [1] - 64:7</p> <p>accident [1] - 14:15</p> <p>accommodation [2] - 15:2, 58:24</p> <p>accommodations [1] - 61:24</p> <p>account [2] - 64:8, 97:25</p> <p>accusation [1] - 24:7</p> <p>accused [6] - 8:24, 24:5, 24:6, 45:19, 45:21, 63:8</p> <p>accusing [2] - 46:5, 48:19</p> <p>acknowledged [3] - 26:11, 58:21, 96:6</p> <p>act [1] - 55:14</p> <p>acted [1] - 34:19</p> <p>acting [1] - 38:7</p> <p>action [1] - 45:24</p> <p>actions [2] - 90:10, 91:6</p> <p>actual [1] - 49:4</p> <p>add [3] - 17:7, 74:19, 82:19</p> <p>addition [2] - 44:25, 84:23</p> <p>additional [13] - 5:9, 13:12, 15:13, 16:22, 39:1, 40:5, 57:1, 59:8, 60:6, 68:1, 80:21, 80:22, 92:16</p> <p>address [9] - 5:11, 7:2, 18:7, 21:21, 40:19, 70:4, 72:24, 90:4, 97:3</p> <p>addressed [1] - 53:5</p> <p>addressing [1] - 36:3</p> <p>adhere [1] - 84:18</p> <p>adhered [1] - 84:24</p> <p>adjourned [1] - 103:25</p> <p>administrative [1] - 11:3</p> <p>admissibility [2] - 50:4, 53:8</p> <p>admissible [1] - 51:23</p> <p>admission [1] - 50:2</p> <p>admitted [1] - 48:25</p> <p>admonition [1] - 60:21</p> <p>adulterer [1] - 61:23</p> <p>adverse [2] - 12:10, 85:9</p> <p>advised [1] - 68:7</p> <p>advisement [1] - 98:11</p> <p>advocacy [2] - 47:11</p> <p>advocate [3] - 47:8, 88:17, 92:20</p> <p>advocates [1] - 44:19</p> <p>affairs [2] - 21:14, 26:2</p> <p>affected [1] - 90:10</p>
<p>2</p> <p>2 [3] - 2:18, 57:2, 72:25</p> <p>20 [2] - 19:25, 27:1</p> <p>200 [1] - 73:7</p> <p>2016 [1] - 31:24</p> <p>2017 [6] - 78:22, 83:3, 83:5, 93:8, 93:9, 93:22</p> <p>2018 [4] - 79:1, 93:10, 93:22, 94:1</p> <p>2019 [4] - 88:1, 91:25, 93:6, 93:7</p> <p>2020 [1] - 79:1</p> <p>2021 [9] - 9:21, 68:24, 80:4, 81:22, 94:2, 94:24, 94:25, 95:19, 96:11</p> <p>2022 [1] - 88:1</p> <p>2023 [2] - 1:7, 94:9</p> <p>2024 [1] - 40:7</p> <p>20th [1] - 3:2</p> <p>22-CV-00893 [1] - 1:4</p> <p>22-CV-893 [1] - 4:5</p> <p>225 [1] - 3:10</p> <p>23-MC-1587 [2] - 1:13, 4:6</p> <p>233 [1] - 3:5</p>	<p>718 [1] - 3:11</p> <p>73 [2] - 18:1, 23:1</p> <p>75 [1] - 3:2</p> <p>8</p> <p>803(8) [4] - 50:3, 51:3, 51:9, 53:14</p> <p>803(8) [2] - 49:18, 49:24</p> <p>803(B) [1] - 53:19</p> <p>85 [1] - 1:24</p> <p>86th [1] - 2:15</p> <p>9</p> <p>90 [1] - 2:5</p> <p>99 [1] - 2:8</p> <p>A</p> <p>a.m [1] - 1:8</p>	<p>2 [3] - 2:18, 57:2, 72:25</p> <p>20 [2] - 19:25, 27:1</p> <p>200 [1] - 73:7</p> <p>2016 [1] - 31:24</p> <p>2017 [6] - 78:22, 83:3, 83:5, 93:8, 93:9, 93:22</p> <p>2018 [4] - 79:1, 93:10, 93:22, 94:1</p> <p>2019 [4] - 88:1, 91:25, 93:6, 93:7</p> <p>2020 [1] - 79:1</p> <p>2021 [9] - 9:21, 68:24, 80:4, 81:22, 94:2, 94:24, 94:25, 95:19, 96:11</p> <p>2022 [1] - 88:1</p> <p>2023 [2] - 1:7, 94:9</p> <p>2024 [1] - 40:7</p> <p>20th [1] - 3:2</p> <p>22-CV-00893 [1] - 1:4</p> <p>22-CV-893 [1] - 4:5</p> <p>225 [1] - 3:10</p> <p>23-MC-1587 [2] - 1:13, 4:6</p> <p>233 [1] - 3:5</p>

afield [2] - 60:15, 60:18
afternoon [1] - 100:15
AG [28] - 14:9, 22:22, 22:24, 23:7, 23:10, 23:12, 23:15, 30:22, 31:11, 31:12, 31:14, 43:11, 79:3, 79:8, 79:9, 79:13, 79:23, 80:16, 89:4, 94:18, 95:19, 96:9, 96:21, 97:11, 97:22, 101:1, 101:7, 101:8
AG's [16] - 7:18, 14:21, 31:4, 37:13, 37:18, 39:12, 56:11, 58:19, 58:23, 58:25, 60:4, 62:9, 87:5, 89:3, 94:23, 99:16
agency [3] - 11:4, 28:13
agency-wide [1] - 28:13
ago [5] - 19:5, 47:7, 75:9, 75:16, 78:1
agree [18] - 19:19, 37:6, 52:18, 59:16, 59:17, 59:20, 60:20, 60:22, 61:1, 61:25, 67:15, 72:16, 73:13, 78:3, 82:13, 82:22, 87:10, 100:25
agreed [6] - 16:4, 47:14, 58:23, 60:3, 66:7, 100:11
agreement [4] - 27:18, 27:19, 27:25, 97:9
agreements [1] - 61:24
agrees [1] - 38:12
ahead [2] - 18:25, 37:18
aided [3] - 3:13, 41:23, 46:7
aiders [1] - 45:22
aiders [1] - 42:6
aiding [1] - 45:20
airplane [1] - 68:21
aisle [1] - 60:25
AJC [1] - 52:21
al [2] - 1:9, 4:6
Albany [1] - 2:18
Alessandra [2] - 2:24, 87:25
ALI [2] - 2:23, 2:25
allegation [11] - 27:2, 27:5, 30:16, 30:25, 35:6, 44:16, 72:10, 79:22, 88:6, 94:11, 98:3
allegations [51] - 19:5, 19:11, 19:13, 19:16, 22:4, 24:4, 25:9, 26:25, 27:22, 28:22, 29:2, 29:25, 31:22, 32:8, 39:6, 42:3, 44:12, 45:8, 45:18, 46:3, 46:4, 46:11, 59:11, 61:5, 61:19, 63:6, 64:5, 66:8, 66:25, 68:19, 69:6, 69:13, 71:1, 72:13, 72:14, 73:7, 73:23, 75:17, 75:19, 76:3, 76:10, 76:23, 80:2, 81:2, 85:24, 87:18, 95:14, 97:16, 98:6
alleged [2] - 42:7, 69:25
allegedly [3] - 59:20, 67:4, 81:24
alleges [1] - 13:23
Allegra [1] - 4:23
allow [1] - 53:15
allowed [5] - 67:18, 68:2, 70:7, 76:25, 92:3
alluded [1] - 99:8
almost [1] - 94:5
alone [2] - 26:25, 27:6
alterations [1] - 84:16

Alyssa [2] - 78:20, 81:17
ambulance [1] - 103:13
amenable [5] - 40:11, 45:3, 45:11, 56:22, 59:1
AMER [1] - 68:7
Amer [4] - 53:2, 68:5, 68:6, 100:14
amorphous [1] - 79:25
Ana [10] - 25:11, 25:18, 25:20, 32:20, 37:4, 39:11, 55:9, 55:10, 55:11
analogous [1] - 10:22
analogy [1] - 11:12
analysis [5] - 12:3, 13:7, 53:15, 90:17, 93:1
ANDREW [1] - 1:12
Andrew [1] - 4:20
ANELLO [1] - 2:11
Anello [1] - 5:1
answer [7] - 6:9, 74:24, 77:16, 79:20, 87:2, 87:13, 94:6
answers [2] - 30:17, 41:21
anticipate [4] - 7:15, 15:12, 49:15, 89:7
anticipated [1] - 7:2
anyway [6] - 37:19, 38:8, 45:1, 46:16, 49:12, 55:21
apart [1] - 88:4
appear [1] - 32:1
appearance [2] - 57:2, 57:19
appearances [1] - 4:8
appearing [1] - 5:2
applicability [1] - 91:2
application [1] - 69:3
apply [1] - 43:20
appointed [1] - 37:16
appointment [1] - 76:14
appreciate [6] - 61:3, 72:21, 74:25, 83:18, 93:14, 103:8
approach [1] - 17:15
appropriate [3] - 32:19, 36:5, 66:12
appropriately [1] - 26:7
April [1] - 79:12
apropos [1] - 67:21
areas [1] - 65:25
arguably [3] - 76:16, 77:7, 92:23
argue [3] - 54:21, 54:22, 55:21
argued [1] - 66:10
argument [12] - 10:13, 23:14, 23:18, 23:19, 23:23, 38:7, 47:1, 55:7, 67:11, 68:4, 70:20, 103:21
arguments [2] - 89:9, 89:10
arrived [1] - 68:5
article [6] - 31:18, 31:19, 31:24, 32:1, 32:2, 75:14
aspects [1] - 74:5
Assembly [5] - 6:12, 7:18, 23:18, 49:23, 91:3
asserting [1] - 90:18
assigned [1] - 26:13
assistant [1] - 11:3
assume [2] - 17:18, 49:18

assuming [1] - 103:20
assure [2] - 36:8, 54:25
Atlantic [1] - 9:20
attaches [1] - 90:12
attack [4] - 6:11, 46:17, 55:3
attempt [1] - 6:8
attempting [1] - 6:10
attention [2] - 55:15, 95:25
attorney [1] - 37:16
Attorney [41] - 6:1, 6:12, 7:10, 15:24, 18:14, 23:19, 25:4, 29:6, 29:11, 29:22, 31:3, 37:16, 38:2, 38:4, 38:24, 39:4, 39:15, 39:18, 52:21, 56:18, 56:21, 58:8, 58:10, 60:2, 62:14, 62:15, 76:14, 77:8, 77:11, 77:13, 78:4, 78:5, 78:13, 78:14, 91:25, 94:2, 94:5, 94:11, 94:13, 99:12, 103:22
attorneys [4] - 44:8, 57:1, 57:24, 88:3
attractive [1] - 55:16
August [5] - 9:21, 18:10, 95:16, 96:14, 97:5
authorized [2] - 50:7, 50:10
available [2] - 73:8, 100:15
Avenue [2] - 1:24, 2:12
average [1] - 66:16
avoid [2] - 10:1, 35:10
aware [4] - 17:2, 63:17, 90:3, 96:12
Azzopardi [18] - 2:12, 5:3, 21:10, 29:10, 38:14, 40:12, 41:9, 41:21, 41:22, 42:6, 42:14, 42:21, 45:18, 46:3, 56:14, 103:7, 103:8, 103:11
Azzopardi's [3] - 45:23, 46:1, 86:7

B

backdoor [1] - 96:15
backing [1] - 69:8
backward [1] - 102:13
backwards [1] - 80:24
badly [1] - 32:20
balancing [1] - 51:25
barrage [1] - 65:18
based [9] - 7:18, 12:23, 15:3, 25:4, 25:5, 53:23, 54:2, 54:3, 65:20
basic [1] - 58:3
basis [4] - 28:13, 48:1, 55:24, 103:2
battery [1] - 65:11
BEACH [1] - 2:8
Beach [1] - 5:5
became [3] - 25:9, 25:14, 95:24
becomes [2] - 16:12, 68:18
becoming [1] - 69:7
bed [1] - 65:16
BEFORE [1] - 1:21
began [1] - 26:17
beginning [3] - 9:21, 16:11, 44:2
behalf [9] - 4:22, 5:5, 12:25, 43:7, 57:12, 57:14, 75:2, 83:19, 84:10
behavior [2] - 13:20, 77:24

behind [1] - 61:13
belief [1] - 51:5
bench [1] - 22:21
beneficial [1] - 45:5
benefit [1] - 91:1
Bennett [25] - 3:6, 27:13, 27:14, 27:16, 31:10, 39:16, 39:20, 39:24, 40:8, 40:11, 40:21, 40:25, 41:1, 41:3, 76:8, 76:9, 76:22, 83:19, 84:4, 84:10, 86:4, 86:12, 96:8
Bennett's [1] - 76:11
best [1] - 81:19
better [1] - 44:7
between [12] - 35:13, 58:22, 60:3, 60:12, 72:5, 78:25, 95:18, 96:7, 97:22, 98:25, 99:22, 102:21
beyond [7] - 9:24, 14:25, 17:5, 68:2, 72:14, 77:8, 96:21
Bharara [1] - 54:23
Biaggi [9] - 2:24, 87:25, 88:10, 91:16, 91:24, 92:5, 92:7, 93:2, 93:5
bias [1] - 70:13
big [1] - 29:3
bill [1] - 24:9
billing [1] - 37:20
birthday [2] - 81:22, 81:23
bit [3] - 35:20, 65:5, 79:14
Black [1] - 7:19
Blackberries [1] - 21:25
blacked [1] - 20:2
blame [1] - 60:25
blown [1] - 56:1
blurring [2] - 51:5, 67:13
boilerplate [3] - 55:17, 95:15, 98:5
boiling [1] - 67:16
book [1] - 76:19
boom [1] - 64:10
boundaries [6] - 32:13, 60:19, 61:2, 67:16, 67:21, 79:17
boundary [3] - 6:25, 19:9, 33:15
bounds [3] - 16:16, 32:19, 34:13
box [1] - 102:12
Boylan [54] - 2:15, 4:7, 4:15, 12:25, 13:3, 13:4, 23:3, 23:5, 23:9, 25:17, 25:18, 25:22, 26:1, 27:21, 28:17, 28:21, 30:21, 30:22, 30:23, 31:4, 31:8, 39:3, 57:20, 58:21, 59:10, 59:11, 59:22, 60:13, 60:24, 61:15, 63:5, 63:23, 64:3, 64:19, 65:1, 65:8, 65:21, 68:12, 68:19, 68:23, 68:25, 69:2, 69:16, 76:2, 76:4, 76:22, 92:4, 92:8, 96:8, 96:12, 96:13, 97:9, 97:14
BOYLAN [1] - 1:17
Boylan's [14] - 26:25, 27:11, 57:24, 58:22, 59:18, 60:16, 63:20, 63:21, 64:7, 66:8, 69:12, 76:3, 96:17, 97:15
brainwashed [1] - 22:8
break [1] - 103:20
breathe [1] - 29:3
brief [1] - 11:11

briefing [5] - 7:5, 7:7, 91:19, 99:1, 103:18
briefly [1] - 100:13
BRINCKERHOFF [1] - 3:2
Brittany [2] - 81:16
Broad [1] - 2:5
broad [1] - 49:11
broadly [1] - 59:10
Broadway [2] - 2:24, 3:5
Broderick [1] - 84:24
Brooklyn [2] - 1:6, 3:11
brought [7] - 6:7, 28:14, 68:16, 73:11, 73:20, 79:5, 89:18
brutal [1] - 30:9
bubbled [1] - 44:2
bulk [1] - 100:15
bully [1] - 61:23
bunch [1] - 89:23
burden [2] - 35:10, 70:22
burdened [2] - 14:16, 86:6
burdensome [2] - 96:5, 102:7
buried [1] - 46:8
BY [10] - 1:25, 2:3, 2:9, 2:13, 2:16, 2:16, 2:19, 2:22, 2:25, 3:7
bystander [1] - 66:17

C

Cadman [1] - 3:10
calendar [1] - 76:13
camp [1] - 35:11
campaign [7] - 28:19, 31:1, 59:18, 60:13, 60:17, 63:21, 93:10
canceled [1] - 21:17
cancelled [1] - 8:19
cannot [6] - 9:11, 54:21, 55:18, 70:8, 72:16, 102:25
capacity [1] - 90:15
CAPEZZA [3] - 2:17, 2:19, 72:23
Capezza [5] - 57:2, 57:16, 57:23, 68:9, 72:22
care [9] - 22:24, 28:20, 28:21, 29:6, 29:7, 31:2, 38:8
CARRIE [1] - 2:22
case [136] - 5:12, 5:21, 6:3, 6:7, 6:14, 6:17, 6:20, 6:22, 7:3, 7:11, 7:15, 7:20, 7:22, 7:23, 8:3, 8:9, 10:10, 11:18, 11:22, 13:21, 14:4, 14:13, 15:19, 16:14, 16:16, 16:17, 16:18, 17:19, 19:2, 19:8, 19:24, 21:9, 21:25, 22:4, 23:1, 24:11, 24:13, 24:21, 25:13, 26:20, 28:22, 29:4, 29:18, 29:23, 29:25, 32:7, 32:9, 32:14, 32:16, 32:17, 32:22, 33:11, 33:18, 34:8, 34:12, 34:16, 35:25, 36:8, 38:20, 39:20, 40:5, 40:6, 40:9, 40:13, 40:21, 40:25, 41:6, 41:19, 42:4, 43:1, 44:1, 44:11, 44:21, 44:22, 46:22, 47:15, 47:24, 48:24, 49:5, 51:17, 51:18, 52:3, 53:24, 54:21, 56:23, 60:18, 60:19, 63:25, 64:22,

69:8, 71:6, 72:8, 73:19, 75:25, 82:17, 83:20, 83:25, 84:5, 84:7, 84:25, 85:10, 85:16, 85:18, 85:21, 86:9, 86:10, 86:13, 86:17, 86:18, 86:23, 90:5, 91:3, 93:20, 94:8, 94:10, 94:12, 95:1, 95:8, 95:15, 96:5, 96:13, 96:22, 97:17, 98:2, 98:3, 98:6, 98:8, 98:13, 98:16, 98:20, 100:4, 100:7, 100:16, 103:4, 103:8
caselaw [1] - 83:4
cases [5] - 36:1, 36:25, 40:14, 49:1, 84:8
categorical [2] - 90:21, 91:8
categories [6] - 30:23, 59:8, 59:18, 66:10, 67:5, 67:13
Catherine [1] - 4:25
CATHERINE [1] - 2:13
CAUSE [1] - 1:20
caused [1] - 21:2
cell [2] - 21:22, 98:18
CELLI [1] - 3:2
center [1] - 54:10
certain [5] - 53:23, 55:14, 85:20, 102:23
certainly [13] - 40:23, 48:11, 60:24, 61:2, 62:25, 63:3, 72:6, 86:16, 87:13, 88:8, 92:25, 93:24, 100:3
challenge [3] - 65:19, 67:10, 67:22
chamber [7] - 10:15, 18:23, 88:18, 91:24, 93:6, 93:21, 94:1
changed [1] - 21:19
characterization [4] - 5:22, 19:20, 54:7, 60:23
characterized [2] - 5:20, 66:19
characterizes [1] - 54:5
Charlotte [11] - 3:5, 31:10, 31:13, 39:16, 39:19, 39:24, 40:20, 40:21, 40:25, 41:1, 96:8
chase [1] - 30:11
chasers [1] - 103:13
Chief [1] - 16:17
child [2] - 20:24, 79:5
children [1] - 13:24
choose [1] - 33:7
chose [1] - 93:20
churning [1] - 24:9
Circuit [3] - 7:19, 35:25, 51:22
circular [1] - 11:5
circumstances [4] - 32:18, 53:22, 68:15, 75:19
cited [1] - 48:23
citing [2] - 88:22, 88:24
civil [5] - 4:4, 6:3, 24:11, 30:9, 50:4
CIVIL [1] - 1:20
claim [4] - 41:10, 41:12, 41:20, 101:9
claimed [1] - 26:1
claiming [1] - 68:20
claims [3] - 40:18, 95:14, 98:6
clarification [1] - 45:17
clarify [1] - 13:9
classmate [1] - 81:5

clear [20] - 6:24, 11:18, 21:23, 22:14, 33:21, 33:22, 46:10, 46:21, 47:25, 48:1, 59:7, 59:15, 59:16, 63:5, 64:20, 64:25, 70:21, 71:7, 73:1, 103:3
clearly [3] - 10:5, 51:22, 65:20
Cleary [1] - 37:12
client [28] - 24:12, 30:15, 30:16, 41:2, 45:11, 45:17, 47:9, 58:9, 61:3, 62:2, 63:2, 69:23, 72:10, 72:18, 78:6, 82:14, 85:22, 86:5, 86:11, 87:13, 87:17, 88:3, 89:4, 89:5, 95:14, 95:22, 101:20, 103:1
client's [7] - 34:12, 58:14, 70:15, 84:20, 97:6, 97:24, 98:3
clients [8] - 41:7, 41:8, 41:25, 42:3, 44:9, 44:25, 80:5, 80:9
close [5] - 5:22, 9:12, 27:19, 30:22, 81:17
closely [1] - 78:25
clue [1] - 53:19
co [1] - 49:2
co-employee [1] - 49:2
COHEN [4] - 2:22, 39:24, 75:4, 78:16
Cohen [4] - 57:3, 68:9, 75:2, 78:15
collaborating [1] - 34:24
collaboratively [1] - 33:25
collateral [1] - 32:25
colleague [4] - 4:15, 4:23, 20:13, 57:3
colleagues [3] - 4:18, 5:2, 37:1
college [7] - 27:10, 27:12, 27:18, 60:16, 63:20, 65:7, 70:14
College [3] - 86:14, 86:20, 86:23
colleges [1] - 30:8
collusion [1] - 48:12
coming [9] - 27:18, 29:8, 36:21, 44:23, 48:7, 81:5, 92:12, 101:10
comment [1] - 8:14
comments [2] - 72:21, 102:20
Commisso [4] - 81:15, 81:16, 81:25
commit [1] - 63:10
Committee [3] - 6:12, 23:19, 91:3
committing [1] - 46:6
communicate [1] - 64:8
communicated [4] - 63:24, 75:20, 93:25
communicating [2] - 88:16, 92:10
communication [2] - 81:4, 96:7
communications [23] - 21:3, 21:7, 22:12, 31:5, 31:7, 39:5, 60:12, 64:4, 64:14, 64:16, 76:12, 79:22, 88:14, 95:18, 96:7, 96:11, 96:18, 96:20, 96:21, 97:7, 97:13, 97:22, 101:13
compel [5] - 43:14, 43:15, 44:5, 56:1, 102:6
complainant [3] - 24:18, 24:19, 24:21
complainant's [1] - 54:3
complainants [31] - 6:2, 6:14, 10:8, 10:18, 10:21, 12:16, 15:13, 16:23, 18:1, 18:12, 31:6, 32:24, 32:25, 39:6, 44:23, 62:8, 63:25, 64:4, 65:24, 65:25, 66:19, 72:7, 75:6, 76:21, 95:19, 96:9,

96:22, 97:7, 97:13, 97:22, 101:13
Complaint [15] - 18:2, 23:4, 27:2, 27:9, 28:6, 29:4, 41:1, 41:12, 42:3, 44:13, 73:3, 74:16, 74:17, 79:21, 88:8
complaint [1] - 28:9
complaints [3] - 28:12, 59:19, 67:3
complete [2] - 8:10, 8:16
completed [1] - 14:12
completely [1] - 32:22
complex [2] - 5:16, 36:10
complexity [2] - 52:16, 55:23
complicated [1] - 53:3
complied [1] - 94:4
comply [2] - 75:21, 95:13
complying [1] - 9:13
component [2] - 60:9, 62:7
comport [1] - 51:7
comprise [2] - 18:1, 59:13
Computer [1] - 3:13
Computer-aided [1] - 3:13
computerized [1] - 3:13
concept [1] - 42:17
concern [1] - 40:22
concerned [4] - 21:3, 85:8, 85:15, 87:17
concerning [3] - 31:5, 37:13, 70:2
concluded [1] - 48:15
conclusion [3] - 24:24, 37:6, 51:1
conclusions [4] - 51:3, 52:2, 55:8, 55:12
concrete [1] - 95:20
conduct [3] - 6:6, 8:2, 8:5
conducted [3] - 5:25, 6:11, 29:14
confer [21] - 6:18, 14:11, 14:23, 38:25, 59:4, 62:11, 79:15, 80:25, 84:15, 90:24, 91:14, 92:17, 93:13, 94:20, 95:3, 95:17, 97:1, 97:4, 98:21, 102:12
CONFERENCE [1] - 1:20
conference [12] - 4:5, 5:14, 24:3, 44:3, 65:21, 68:6, 74:1, 87:7, 89:8, 89:17
conferences [3] - 80:4, 80:9, 87:19
conferred [2] - 6:21, 9:15
conferring [2] - 43:12, 44:20
confers [13] - 30:4, 30:13, 47:17, 80:23, 83:12, 88:11, 95:10, 97:20, 98:7, 100:21, 101:5, 101:24, 102:10
Confide [1] - 69:4
confidential [4] - 84:21, 99:14, 99:15, 100:9
confidentiality [4] - 84:20, 100:3, 100:6, 100:10
conflicting [4] - 40:22, 40:24, 84:12, 85:11
connection [1] - 56:23
consent [2] - 21:8, 56:18
consider [4] - 63:1, 63:4, 78:7, 98:15
consideration [1] - 61:10
considerations [1] - 70:23
consist [1] - 99:16
consists [1] - 76:2

conspiracy [2] - 35:9
constituent [2] - 90:13, 90:15
constituent-related [1] - 90:15
consult [1] - 63:2
contact [1] - 26:8
contacted [1] - 92:4
contacts [1] - 31:7
contain [1] - 99:4
contest [1] - 16:21
contested [1] - 50:13
context [5] - 10:12, 50:4, 50:13, 54:14, 91:5
continue [6] - 24:5, 42:5, 44:10, 53:12, 77:22, 100:4
continued [1] - 65:14
Continued [1] - 71:8
continues [3] - 13:21, 96:24, 103:5
Continuing [1] - 72:1
continuing [4] - 47:19, 65:11, 65:17, 103:4
contravention [1] - 6:22
conveniently [1] - 9:19
conversation [5] - 7:5, 57:21, 66:13, 76:18, 93:2
conversations [5] - 30:18, 72:3, 72:5, 74:4, 81:2
cooperating [1] - 45:12
coping [1] - 96:2
core [1] - 19:13
Corporation [2] - 28:10, 68:14
correct [5] - 6:8, 34:13, 38:22, 55:22, 103:10
corrected [1] - 18:8
correction [1] - 93:4
correspondence [1] - 35:12
correspondences [1] - 89:2
counsel [34] - 5:8, 17:25, 18:19, 21:8, 21:9, 21:22, 22:11, 27:19, 28:5, 28:10, 29:12, 29:19, 36:9, 36:19, 39:22, 58:18, 58:23, 59:5, 70:25, 79:16, 80:24, 85:19, 86:7, 86:10, 86:11, 88:12, 88:24, 89:13, 93:13, 95:12, 101:17, 102:22, 103:1
Counsel [1] - 95:6
counsel's [1] - 100:21
counseled [1] - 68:17
counseling [2] - 92:21, 92:22
count [2] - 5:16, 61:17
couple [7] - 18:13, 20:7, 21:12, 33:6, 63:14, 73:6, 83:24
course [20] - 6:5, 17:12, 17:22, 18:4, 22:12, 26:3, 54:8, 57:18, 58:19, 58:25, 60:8, 61:20, 70:5, 70:22, 86:12, 90:5, 90:18, 91:11, 95:9, 99:6
COURT [142] - 1:1, 4:2, 5:7, 10:5, 11:12, 11:23, 12:11, 12:15, 12:23, 13:2, 13:5, 13:8, 15:1, 15:7, 15:12, 15:17, 15:21, 15:23, 16:9, 16:13, 17:2, 17:6, 17:12, 19:19, 20:20, 20:24, 23:14, 24:24, 27:10, 27:13, 32:8, 32:11, 33:5, 33:10,

33:14, 33:23, 34:5, 34:13, 34:24, 35:2, 35:5, 35:22, 36:3, 36:14, 37:20, 37:24, 38:1, 38:4, 38:11, 38:21, 39:19, 39:25, 40:2, 40:15, 40:20, 43:3, 43:6, 43:12, 45:14, 46:21, 46:24, 47:7, 47:14, 49:13, 49:15, 49:18, 49:20, 50:3, 50:6, 50:9, 50:12, 50:17, 50:20, 51:1, 51:11, 51:18, 51:24, 52:2, 52:6, 52:10, 52:13, 52:16, 52:19, 53:11, 53:19, 54:3, 54:8, 54:10, 54:24, 55:7, 55:22, 56:16, 57:7, 57:9, 57:16, 57:18, 59:3, 59:22, 60:5, 62:13, 63:12, 63:15, 63:18, 64:15, 64:22, 65:3, 65:19, 66:3, 66:6, 66:16, 67:8, 68:3, 68:8, 69:18, 70:2, 71:4, 72:21, 74:25, 78:15, 78:17, 83:18, 83:23, 86:25, 87:3, 87:21, 87:23, 89:16, 90:21, 90:23, 91:21, 92:15, 93:11, 93:14, 100:11, 100:14, 100:19, 101:3, 101:6, 102:4, 102:9, 102:18, 103:16
Court [27] - 3:9, 3:10, 8:21, 16:14, 16:15, 21:16, 22:16, 22:22, 23:23, 37:23, 44:11, 63:17, 65:12, 65:19, 72:24, 73:12, 74:2, 74:23, 84:11, 84:19, 87:1, 89:11, 90:4, 96:17, 97:14, 101:24
court [3] - 8:24, 44:23, 84:19
Court's [3] - 7:4, 9:24, 22:20
courtesy [1] - 82:12
Courthouse [1] - 1:6
COURTROOM [2] - 4:1, 4:4
courtroom [2] - 5:10, 61:22
courts [1] - 90:7
covered [2] - 90:15, 91:7
CRAIN [2] - 1:25, 4:12
Crain [1] - 4:12
creativity [1] - 56:10
credibility [4] - 46:18, 77:3, 80:18, 82:6
crime [1] - 46:6
criminal [1] - 24:11
critical [1] - 7:3
criticize [1] - 31:14
cross [4] - 33:1, 43:20, 66:1, 66:24
cross-examination [2] - 33:1, 66:1
cross-examine [1] - 66:24
crosses [1] - 47:12
CRR [1] - 3:9
Cruz [1] - 7:22
culture [1] - 66:20
cumbersome [1] - 91:12
CUOMO [1] - 1:12
Cuomo [46] - 2:2, 4:6, 4:20, 4:23, 5:20, 6:4, 6:10, 6:18, 7:8, 13:23, 14:18, 16:20, 18:8, 20:8, 21:23, 27:3, 28:24, 29:20, 31:18, 35:20, 35:22, 36:8, 41:10, 42:11, 44:9, 44:14, 48:4, 48:8, 58:11, 59:12, 66:20, 75:12, 75:15, 75:24, 76:10, 78:22, 80:16, 81:25, 91:24, 92:17, 92:21, 93:3, 98:25, 99:19, 99:21, 100:1

Cuomo's [17] - 35:11, 36:4, 36:6, 41:23, 42:7, 42:14, 42:24, 70:25, 77:24, 85:19, 88:2, 88:12, 88:24, 90:23, 91:15, 102:20, 102:22
curious [2] - 17:14, 58:13
current [2] - 6:9, 48:2
cut [2] - 30:10, 48:7

D

DANIEL [1] - 2:9
Daniel [1] - 5:4
DANYA [1] - 2:16
Danya [1] - 4:14
dark [1] - 72:18
date [5] - 15:4, 18:24, 94:24, 98:9, 101:14
daughter [4] - 9:9, 20:22, 20:25, 35:14
daughter's [2] - 14:24, 34:22
days [2] - 20:11, 28:15
deadline [5] - 10:4, 17:10, 17:11, 40:6, 40:9
deal [5] - 23:8, 29:25, 53:7, 91:13
dealing [1] - 89:19
dealt [1] - 30:1
DeArcy [1] - 54:25
decided [1] - 61:19
decision [2] - 33:8, 42:1
declaration [1] - 98:1
defend [5] - 6:10, 23:13, 24:12, 44:14, 44:17
Defendant [2] - 2:1, 2:8
defendant [15] - 9:4, 11:20, 36:1, 50:1, 54:16, 75:12, 75:15, 75:24, 76:10, 82:9, 86:9, 88:11, 88:24, 98:22, 99:19
defendant's [2] - 7:9, 93:13
defendants [14] - 8:18, 8:22, 38:14, 40:6, 40:13, 40:15, 59:13, 60:17, 65:12, 75:25, 79:10, 80:10, 84:3, 94:12
Defendants [3] - 1:10, 1:16, 2:11
defendants' [1] - 33:19
defending [1] - 46:22
defense [13] - 24:5, 24:11, 29:7, 30:1, 36:9, 79:16, 80:24, 94:7, 94:10, 95:12, 96:22, 98:8, 100:5
Defense [1] - 95:6
defer [1] - 13:11
deficiency [1] - 7:8
definition [5] - 26:6, 37:9, 55:13, 55:17, 82:3
definitions [1] - 51:7
degree [2] - 30:6, 39:15
deleting [1] - 69:3
demand [1] - 9:3
denied [2] - 37:17, 96:19
Department [4] - 26:12, 30:9, 73:4, 73:24
department [1] - 11:2
depose [9] - 10:20, 12:7, 41:3, 41:17,

82:21, 82:22, 86:8, 86:12, 86:13
deposed [9] - 8:17, 13:17, 14:18, 16:4, 19:5, 20:12, 35:21, 35:22, 36:9
deposition [53] - 8:17, 8:18, 9:4, 9:5, 9:10, 12:16, 13:12, 16:24, 18:9, 18:10, 18:20, 19:1, 19:3, 19:6, 19:15, 20:3, 20:9, 20:10, 20:11, 20:12, 21:5, 21:8, 21:19, 21:20, 22:6, 22:13, 24:1, 24:19, 25:12, 26:9, 29:21, 36:4, 36:7, 36:19, 36:23, 36:24, 43:2, 45:23, 47:18, 48:16, 54:4, 77:19, 77:22, 79:11, 83:2, 83:7, 83:12, 86:6, 97:7, 99:5, 99:16, 101:10, 101:15
depositions [20] - 12:12, 13:9, 13:10, 15:13, 16:1, 17:5, 18:16, 21:15, 21:17, 23:21, 24:17, 25:11, 27:7, 29:9, 29:10, 29:12, 41:14, 41:15, 79:8, 82:20
deputy [1] - 5:10
Deputy [1] - 37:16
DEPUTY [2] - 4:1, 4:4
DeRosa [25] - 2:11, 5:3, 14:6, 17:16, 21:9, 29:10, 38:14, 40:12, 40:17, 40:19, 41:2, 41:8, 41:20, 42:5, 42:13, 42:21, 46:4, 56:14, 86:4, 86:7, 86:9, 86:12, 86:13, 103:7
described [3] - 17:17, 48:4, 55:17
designated [1] - 84:21
designation [1] - 100:7
despite [1] - 31:11
destroy [1] - 69:4
detail [1] - 18:17
detailed [2] - 90:19, 91:8
details [1] - 25:6
determination [1] - 71:5
determine [1] - 39:1
detour [2] - 86:15, 86:16
detrimental [1] - 92:21
develop [2] - 16:18, 16:22
developed [1] - 6:24
Development [2] - 28:10, 68:14
Devil's [1] - 92:20
Diane [8] - 20:13, 20:15, 20:16, 20:18, 21:4, 21:20, 22:6, 48:17
dictate [1] - 63:23
different [18] - 9:23, 10:14, 10:17, 11:10, 28:19, 32:22, 34:17, 40:5, 40:14, 51:16, 70:15, 72:12, 76:23, 81:11, 83:24, 91:6, 99:13, 102:9
differently [2] - 14:14, 91:4
difficult [2] - 34:1, 55:25
dig [1] - 47:4
dilemma [2] - 16:14, 16:15
direct [2] - 6:22, 65:12
direction [1] - 45:13
directly [5] - 9:11, 10:15, 13:23, 66:8, 67:25
director [3] - 63:21, 64:7, 65:6
dirt [2] - 13:23, 13:25
disagree [1] - 100:22
disappointing [2] - 24:8, 34:3

<p>disclosed [1] - 77:25 disclosure [3] - 27:25, 78:9, 87:4 disclosures [2] - 10:9, 78:11 discover [2] - 32:19, 46:25 discoverable [1] - 96:20 discovery [59] - 5:14, 5:15, 5:21, 5:23, 6:3, 6:4, 6:6, 6:19, 7:7, 8:10, 8:16, 9:21, 10:2, 10:6, 10:19, 13:3, 13:18, 14:5, 14:13, 15:3, 17:10, 17:19, 19:12, 22:17, 22:25, 23:10, 24:16, 30:9, 32:16, 33:3, 36:7, 36:18, 38:19, 38:20, 39:21, 40:3, 40:6, 40:9, 44:7, 44:15, 44:16, 44:24, 48:11, 48:13, 51:15, 53:4, 53:15, 54:11, 56:5, 62:14, 65:2, 71:7, 81:14, 84:3, 84:25, 85:2, 85:3, 85:8, 95:14 discredited [1] - 87:18 discrimination [3] - 37:9, 49:1, 54:14 discuss [4] - 9:1, 33:14, 89:5, 92:1 discussed [4] - 9:16, 10:12, 52:20, 70:16 discussing [8] - 20:15, 21:22, 22:4, 65:23, 78:6, 80:6, 90:14, 92:12 discussion [5] - 23:15, 47:24, 56:12, 63:10, 92:16 discussions [7] - 34:3, 53:24, 65:24, 67:16, 92:18, 101:21, 102:21 dismiss [4] - 14:7, 40:18, 41:22, 42:2 disparaging [2] - 80:5, 80:9 disproportionate [5] - 66:3, 66:12, 70:21, 92:24, 96:5 dispute [2] - 43:23, 43:24 disputes [3] - 56:4, 84:4, 84:25 disputing [1] - 68:24 distinguished [1] - 88:4 DISTRICT [2] - 1:1, 1:1 District [7] - 27:17, 39:20, 83:20, 84:5, 86:9, 86:13, 86:24 district [2] - 35:25, 66:15 disturbing [1] - 13:20 divorce [1] - 80:8 docket [3] - 4:5, 4:6, 96:13 dockets [1] - 5:17 docs [1] - 31:6 document [8] - 13:13, 40:3, 42:19, 42:22, 59:9, 75:22, 79:11, 86:7 documentary [1] - 13:5 documentation [3] - 84:21, 85:14, 86:20 documented [1] - 79:3 documenting [1] - 28:3 documents [62] - 8:22, 14:9, 17:4, 18:11, 18:21, 22:15, 23:5, 23:21, 27:7, 30:12, 30:15, 31:5, 37:13, 38:24, 39:1, 39:10, 39:17, 41:4, 42:20, 42:21, 42:23, 43:11, 58:18, 59:8, 59:9, 59:14, 59:17, 60:3, 60:5, 64:12, 64:18, 67:25, 74:7, 74:8, 74:10, 75:9, 75:23, 76:1, 76:8, 76:16, 76:18, 76:19, 76:20, 77:6, 77:7, 77:12, 77:13, 77:20, 79:12,</p>	<p>80:20, 80:21, 80:22, 85:5, 85:16, 87:12, 89:2, 94:3, 94:5, 94:24, 101:11, 101:15, 101:19 Doe [2] - 3:2, 57:15 domain [1] - 79:9 domino [1] - 61:20 done [9] - 8:15, 17:20, 42:14, 42:17, 47:6, 59:14, 61:23, 82:24, 82:25 doubt [1] - 25:12 Doug [1] - 4:15 DOUGLAS [1] - 2:16 down [6] - 26:19, 45:24, 69:22, 70:10, 70:11, 89:18 dozen [2] - 95:10, 98:7 dozens [1] - 17:3 drafted [3] - 29:5, 45:25, 95:13 drafts [1] - 76:19 dragged [5] - 61:12, 61:21, 72:19, 74:21, 102:24 drastically [1] - 21:19 drawn [1] - 79:18 drill [1] - 26:19 drop [3] - 18:1, 41:25, 42:4 due [5] - 15:23, 52:24, 67:12, 70:3, 100:23 during [13] - 13:21, 19:6, 25:16, 25:24, 29:8, 30:7, 32:16, 41:15, 73:5, 73:25, 74:1, 92:2, 93:22</p>	<p>employ [1] - 56:3 employed [2] - 38:13, 93:23 employee [2] - 49:2, 57:2 Employee [2] - 2:18, 72:25 employees [3] - 28:8, 99:11 employer's [1] - 49:3 employment [4] - 49:2, 59:19, 68:16, 76:5 enable [1] - 42:14 enabled [1] - 42:6 encourage [1] - 91:14 encouragement [1] - 76:9 end [3] - 8:16, 10:5, 16:23 endured [1] - 75:11 enforce [1] - 31:15 enforcement [1] - 65:13 engage [1] - 56:4 engaged [2] - 90:13, 95:11 Entity [1] - 2:18 enter [1] - 84:22 entire [3] - 88:18, 88:21, 88:25 entirety [2] - 6:11, 7:20 entities [1] - 18:22 entitled [11] - 7:23, 8:7, 8:8, 11:14, 16:20, 46:24, 48:12, 60:12, 61:16, 98:10, 100:6 Entity [1] - 72:24 entries [1] - 76:13 environment [18] - 7:20, 10:10, 10:13, 10:14, 10:25, 11:4, 11:24, 37:7, 47:21, 47:24, 55:13, 55:20, 75:6, 81:13, 100:1, 103:6 equivalent [1] - 11:20 ESD [3] - 28:6, 28:8, 28:12 ESI [1] - 22:11 ESQ [14] - 1:25, 1:25, 2:3, 2:3, 2:4, 2:9, 2:13, 2:16, 2:16, 2:19, 2:22, 2:25, 3:4, 3:7 Esq [1] - 2:6 essential [1] - 12:1 essentially [3] - 14:13, 65:12, 69:23 establish [3] - 47:22, 53:24, 66:20 et [2] - 1:8, 4:6 ethical [2] - 34:11, 61:9 ethically [1] - 34:9 evaluate [2] - 47:15, 48:6 evaluation [1] - 7:4 eve [2] - 20:14, 22:5 evening [1] - 82:2 events [1] - 74:6 eventually [1] - 84:22 evidence [9] - 7:21, 8:8, 13:6, 35:8, 35:9, 46:18, 47:16, 48:20, 48:23 evidentiary [3] - 19:9, 55:24, 56:1 ex [2] - 80:7 ex-husband [2] - 80:7 exact [2] - 36:6, 59:9 exactly [6] - 23:22, 48:4, 50:6, 51:24, 62:9, 74:11</p>
<p style="text-align: center;">E</p>		
<p>e-mail [1] - 97:5 early [3] - 14:4, 79:1, 93:22 earplugs [1] - 30:5 earth [1] - 46:13 East [2] - 2:15, 3:10 Eastern [1] - 86:24 EASTERN [1] - 1:1 edits [1] - 84:16 EEOC [2] - 51:17, 54:14 effect [3] - 22:7, 61:15, 61:20 efficiently [1] - 85:10 effort [6] - 6:19, 32:19, 38:25, 44:21, 56:4, 90:24 efforts [2] - 54:11, 90:11 eight [2] - 10:20, 28:4 Eisenberg [5] - 40:1, 40:2, 57:9, 83:19, 87:6 EISENBERG [8] - 3:5, 3:7, 40:1, 83:22, 84:11, 87:1, 87:8, 87:22 either [5] - 17:4, 36:19, 56:2, 85:18, 102:11 electronic [1] - 22:12 Elizabeth [1] - 28:11 email [1] - 3:12 embarrassed [1] - 63:6 EMERY [1] - 3:2 eminently [1] - 85:17 Empire [2] - 28:10, 68:13</p>		

<p>examination [2] - 33:1, 66:1 examine [1] - 66:24 example [5] - 16:3, 23:8, 30:20, 53:16, 79:21 examples [4] - 34:19, 63:25, 94:14, 95:6 except [4] - 18:13, 96:11, 97:8, 103:8 exception [5] - 8:6, 44:1, 47:23, 52:13, 52:14 exchanged [1] - 94:25 exchanges [1] - 22:10 executive [7] - 10:15, 18:23, 78:23, 91:24, 93:6, 93:21, 94:1 exhausting [1] - 73:6 Exhibit [1] - 98:1 exists [2] - 12:21, 23:6 exonerate [1] - 12:8 expect [1] - 29:20 expedition [3] - 35:19, 82:4, 83:16 experience [6] - 51:6, 59:25, 73:6, 73:8, 73:25, 92:1 experienced [2] - 34:6, 79:1 experiences [5] - 73:22, 74:21, 86:1, 92:6, 92:10 explain [3] - 20:11, 56:13, 99:23 explained [1] - 95:22 explore [6] - 19:17, 22:13, 28:20, 28:25, 60:11, 69:11 explored [1] - 60:2 exploring [1] - 68:13 expose [1] - 44:25 expressed [1] - 80:1 extend [1] - 17:10 extensive [1] - 39:5 extensively [1] - 59:21 extent [25] - 9:7, 12:21, 13:13, 13:14, 14:10, 14:16, 14:22, 15:20, 17:8, 19:7, 21:7, 22:22, 34:6, 46:23, 62:19, 65:21, 67:10, 73:12, 76:21, 79:14, 82:17, 89:23, 90:8, 92:9, 92:11 extorted [1] - 103:13 extortion [1] - 46:6 extortionist [2] - 45:21, 45:25 extortionists [1] - 103:14 extraneously [1] - 46:18 extraordinarily [2] - 44:5, 81:17 extremely [5] - 5:24, 43:21, 72:17, 99:24, 99:25</p>	<p>73:22 factually [1] - 36:10 fair [6] - 8:7, 17:6, 23:16, 31:22, 34:25, 68:3 faith [1] - 30:19 falsely [1] - 68:20 family [2] - 73:15, 95:24 far [10] - 47:4, 52:25, 54:4, 60:10, 60:15, 60:18, 66:15, 67:5, 70:19, 84:18 fashion [2] - 80:20, 83:7 fault [2] - 8:1 favorite [3] - 16:17, 24:7 February [2] - 24:3, 68:24 federal [2] - 75:16, 90:7 feet [1] - 63:1 fellows [1] - 26:13 felt [1] - 90:9 female [1] - 12:1 few [4] - 19:21, 74:14, 76:12, 79:7 Fifth [2] - 1:24, 2:12 fight [1] - 70:12 figure [1] - 33:15 file [6] - 43:16, 43:17, 43:20, 89:7, 89:14, 89:24 filed [5] - 5:18, 6:22, 12:24, 45:24, 85:3 filing [4] - 6:21, 43:13, 43:23, 89:16 fill [2] - 16:6, 94:20 finally [2] - 95:16, 95:20 findings [7] - 50:5, 50:6, 50:13, 50:24, 51:13, 52:4, 54:2 fine [2] - 74:3, 74:14 Fine [1] - 28:11 firm [6] - 5:1, 17:10, 37:12, 103:11, 103:12 firms [1] - 37:18 first [21] - 7:1, 7:13, 9:10, 10:11, 13:18, 17:23, 32:4, 36:25, 37:2, 48:16, 48:22, 59:24, 62:16, 62:24, 72:20, 79:11, 80:25, 84:11, 94:6, 99:8, 101:4 fishing [3] - 35:19, 82:3, 83:16 fit [1] - 16:19 five [1] - 103:21 flights [1] - 68:22 Floor [1] - 3:2 flying [2] - 30:3, 30:10 focused [1] - 94:22 FOERSTER [1] - 2:20 folks [2] - 15:15, 36:11 follow [2] - 62:21, 70:8 followed [1] - 44:1 follower [1] - 69:5 FOR [1] - 1:20 forgot [1] - 68:11 former [4] - 4:19, 18:17, 20:13, 94:4 Former [1] - 63:8 forth [4] - 30:10, 31:10, 58:22, 76:5 forthcoming [1] - 96:16 forum [1] - 6:8 forward [20] - 6:2, 10:18, 15:13, 18:15,</p>	<p>18:20, 26:5, 45:12, 53:11, 66:23, 75:11, 75:13, 76:9, 77:24, 81:5, 92:6, 92:12, 92:13, 102:13, 103:2, 103:17 FOTI [6] - 2:13, 4:25, 40:23, 43:4, 102:17, 102:19 Foti [5] - 4:25, 40:19, 40:20, 45:17, 102:18 four [5] - 28:15, 68:22, 82:22, 83:2, 83:5 fourth [2] - 81:4, 81:5 fourth-grade [1] - 81:5 frankly [4] - 23:9, 34:3, 73:10, 74:8 fraught [1] - 89:20 Friday [1] - 5:18 friends [5] - 73:15, 74:5, 81:17, 81:19, 95:24 frolic [2] - 86:14, 86:15 front [5] - 26:21, 28:8, 29:5, 54:10, 67:22 frustrating [1] - 29:9 full [7] - 35:18, 36:5, 56:1, 79:4, 82:23, 91:7, 99:17 full-blown [1] - 56:1 full-time [1] - 79:4 fully [3] - 19:17, 29:20, 52:23 fundraising [1] - 59:19 funny [1] - 69:15 furtherance [2] - 90:11, 91:17</p>
F		
<p>facing [4] - 16:15, 18:6, 40:9 fact [19] - 11:4, 11:8, 14:20, 18:9, 37:1, 46:14, 51:2, 51:13, 74:10, 79:14, 80:23, 81:19, 88:18, 89:4, 90:16, 90:17, 91:17, 92:7, 92:18 fact-intensive [1] - 90:17 factor [1] - 15:15 facts [3] - 50:17, 50:21, 75:18 factual [11] - 50:5, 50:6, 50:13, 50:24, 51:13, 52:4, 52:6, 52:8, 55:23, 73:20,</p>		
G		
		<p>gallery [2] - 18:3, 36:5 gap [1] - 94:21 gaps [4] - 16:6, 56:12, 94:15, 94:19 garnered [1] - 95:25 Garnsey [1] - 2:8 gathering [2] - 90:11, 91:17 general [1] - 7:10 General [12] - 6:12, 23:19, 60:2, 77:13, 78:4, 78:13, 78:14, 94:3, 94:5, 94:13, 99:12, 103:22 General's [28] - 6:1, 7:10, 15:24, 18:15, 25:4, 29:6, 29:11, 29:22, 31:3, 38:2, 38:5, 38:24, 39:4, 39:15, 39:18, 52:21, 56:18, 56:21, 58:8, 58:10, 62:14, 62:15, 76:15, 77:8, 77:11, 78:6, 91:25, 94:11 Generals [1] - 37:16 generated [1] - 6:5 generis [1] - 15:19 geographic [1] - 11:5 gist [1] - 14:1 given [11] - 10:6, 21:13, 31:22, 34:19, 45:2, 58:4, 64:24, 77:20, 83:25, 97:11, 98:14 glad [1] - 65:20 glaring [1] - 88:9 Glaser [1] - 26:15 Glavin [38] - 4:17, 4:19, 17:13, 32:21, 34:18, 34:20, 44:21, 48:10, 49:6, 52:19, 58:20, 59:5, 61:14, 62:21,</p>

<p>64:23, 68:8, 69:18, 69:21, 80:4, 80:8, 81:10, 81:20, 82:1, 82:21, 85:6, 85:18, 92:24, 94:14, 94:17, 94:22, 95:17, 96:6, 96:10, 96:15, 97:5, 97:21, 97:25, 100:14</p> <p>GLAVIN [36] - 2:1, 2:3, 4:17, 17:23, 19:21, 20:22, 20:25, 23:17, 24:25, 27:11, 27:14, 32:10, 33:21, 33:24, 37:14, 37:21, 37:25, 38:17, 39:2, 39:23, 40:3, 40:17, 59:6, 63:13, 64:17, 64:24, 68:10, 91:20, 91:22, 93:8, 100:13, 100:18, 100:20, 101:4, 101:8, 102:8</p> <p>Glavin's [2] - 38:6, 67:20</p> <p>goal [1] - 44:5</p> <p>God [2] - 80:13, 96:1</p> <p>goodbye [1] - 41:8</p> <p>govern [1] - 86:19</p> <p>Government [2] - 6:5, 18:22</p> <p>government [1] - 75:16</p> <p>governments [1] - 5:25</p> <p>governor [1] - 54:22</p> <p>Governor [91] - 4:19, 4:22, 5:20, 6:3, 6:10, 6:18, 7:7, 8:1, 8:3, 8:8, 9:4, 9:7, 9:19, 10:25, 11:6, 11:13, 11:25, 12:7, 12:20, 13:17, 14:21, 16:20, 18:8, 19:1, 19:14, 20:8, 21:23, 22:4, 25:1, 25:3, 26:2, 26:8, 26:15, 27:3, 27:16, 27:24, 28:16, 31:6, 31:18, 31:25, 35:20, 35:22, 36:4, 36:6, 36:8, 41:10, 41:23, 42:7, 42:11, 42:14, 42:24, 44:9, 44:14, 45:24, 46:2, 46:12, 46:13, 53:16, 55:11, 55:15, 60:1, 61:15, 63:8, 64:21, 66:20, 68:20, 73:25, 75:7, 75:8, 78:22, 78:23, 79:23, 81:19, 85:19, 88:2, 88:6, 88:19, 90:23, 91:15, 91:24, 92:17, 92:21, 94:4, 98:25, 99:6, 99:21, 100:1, 102:20, 102:21</p> <p>Governor's [11] - 8:17, 21:22, 22:15, 26:14, 28:5, 28:24, 29:20, 45:20, 64:25, 81:11, 90:10</p> <p>governs [1] - 86:11</p> <p>grade [2] - 81:4, 81:5</p> <p>GRAND [1] - 2:11</p> <p>grand [1] - 35:8</p> <p>Grand [1] - 5:1</p> <p>granted [1] - 96:18</p> <p>granular [1] - 93:1</p> <p>granularity [1] - 96:23</p> <p>great [2] - 42:1, 48:7</p> <p>guess [1] - 12:14</p> <p>guide [1] - 102:14</p> <p>guidelines [1] - 44:6</p> <p>guys [2] - 91:1, 102:9</p>	<p>Hamilton [3] - 86:14, 86:20, 86:22</p> <p>hammer [1] - 89:18</p> <p>hand [1] - 12:1</p> <p>handed [2] - 48:19, 89:2</p> <p>happy [2] - 74:24, 87:2</p> <p>harass [5] - 11:19, 21:7, 44:10, 77:22</p> <p>harassed [7] - 12:20, 24:23, 26:6, 27:4, 27:24, 41:20, 65:1</p> <p>harassing [1] - 82:7</p> <p>harassment [35] - 7:21, 11:9, 11:10, 11:15, 24:6, 26:6, 28:23, 28:24, 30:25, 41:3, 41:11, 41:16, 41:23, 42:7, 42:15, 45:22, 46:7, 48:24, 51:6, 52:6, 55:17, 59:23, 59:25, 61:5, 63:8, 64:20, 67:12, 70:23, 75:12, 78:21, 79:2, 82:4, 88:6, 88:20, 99:24</p> <p>hard [6] - 12:12, 30:17, 47:15, 62:10, 62:21, 78:17</p> <p>hard-pressed [1] - 12:12</p> <p>harm [1] - 87:20</p> <p>Harris [1] - 5:5</p> <p>HARRIS [1] - 2:8</p> <p>hates [1] - 30:9</p> <p>head [2] - 28:6, 71:2</p> <p>headed [1] - 24:14</p> <p>heal [2] - 73:11, 74:14</p> <p>Health [2] - 73:4, 73:25</p> <p>healthy [1] - 13:19</p> <p>hear [5] - 7:13, 7:20, 17:14, 41:6, 96:1</p> <p>heard [9] - 31:20, 33:4, 44:12, 63:13, 69:15, 75:2, 89:22, 94:14, 100:13</p> <p>hearing [2] - 44:8, 52:20</p> <p>hearings [1] - 56:1</p> <p>hearsay [8] - 25:5, 50:14, 50:15, 52:10, 52:11, 52:12, 52:13, 52:15</p> <p>heavily [3] - 19:18, 19:19, 62:22</p> <p>heavy [1] - 48:19</p> <p>heavy-handed [1] - 48:19</p> <p>held [2] - 80:4, 80:8</p> <p>hello [1] - 41:8</p> <p>help [2] - 32:7, 76:3</p> <p>helped [1] - 76:10</p> <p>HERBERT [1] - 3:7</p> <p>Herbert [1] - 40:1</p> <p>herbert [1] - 40:2</p> <p>herself [2] - 48:20, 92:12</p> <p>hesitate [1] - 74:8</p> <p>hi [1] - 64:9</p> <p>hiding [1] - 8:20</p> <p>highly [2] - 51:8</p> <p>HILL [1] - 2:17</p> <p>himself [3] - 44:17, 57:10, 99:19</p> <p>hinted [1] - 17:9</p> <p>Hinton [19] - 2:21, 13:22, 57:3, 75:3, 75:5, 75:21, 76:4, 76:7, 76:22, 76:24, 77:2, 77:4, 77:5, 77:10, 77:14, 77:23, 78:3, 78:9, 78:13</p> <p>Hinton's [2] - 76:18, 77:22</p> <p>hired [4] - 26:10, 26:12, 26:15, 26:17</p>	<p>history [5] - 9:9, 13:14, 59:18, 67:2, 99:21</p> <p>holding [1] - 57:23</p> <p>holdings [1] - 50:25</p> <p>hole [3] - 69:22, 70:10, 94:21</p> <p>holes [2] - 70:11, 94:15</p> <p>holiday [1] - 31:24</p> <p>home [4] - 18:3, 73:10, 74:13</p> <p>honest [1] - 25:24</p> <p>honestly [2] - 22:24, 85:15</p> <p>Honor [92] - 4:10, 4:12, 4:17, 4:21, 4:25, 5:4, 7:16, 7:24, 8:10, 8:13, 8:14, 8:25, 10:24, 11:18, 12:6, 12:17, 14:2, 14:8, 15:14, 16:1, 16:6, 17:8, 17:9, 22:21, 29:2, 33:4, 33:22, 34:11, 35:1, 35:24, 36:12, 37:1, 37:5, 37:17, 37:21, 38:3, 38:9, 43:10, 45:2, 49:21, 50:5, 50:16, 51:10, 51:21, 52:15, 54:12, 55:3, 56:9, 57:17, 58:16, 60:18, 61:4, 61:9, 61:25, 62:4, 62:7, 63:13, 65:4, 66:4, 67:22, 67:23, 68:12, 70:14, 72:15, 72:23, 75:4, 78:18, 83:15, 87:24, 88:1, 89:1, 89:6, 89:14, 93:4, 93:13, 93:17, 93:18, 94:6, 95:4, 95:10, 96:17, 96:19, 97:19, 98:17, 98:23, 99:7, 99:8, 100:8, 100:20, 102:19</p> <p>Honor's [10] - 8:14, 48:22, 49:12, 60:20, 60:23, 70:8, 77:16, 78:2, 97:18, 99:2</p> <p>HONORABLE [1] - 1:21</p> <p>hoops [1] - 89:23</p> <p>hope [1] - 58:17</p> <p>hopeful [1] - 68:5</p> <p>hopefully [1] - 65:17</p> <p>hoping [1] - 60:14</p> <p>host [1] - 23:11</p> <p>hostile [7] - 7:20, 10:10, 47:23, 55:13, 66:20, 100:1, 103:6</p> <p>hours [8] - 16:4, 24:9, 29:16, 82:23, 83:2, 83:6, 83:10</p> <p>Howard [5] - 26:15, 28:6, 68:22, 68:23, 69:25</p> <p>HUD [1] - 75:9</p> <p>hundred [1] - 75:23</p> <p>hundreds [2] - 79:12, 91:19</p> <p>hurt [1] - 72:7</p> <p>husband [6] - 20:22, 20:25, 35:14, 74:5, 80:7</p> <p>husband's [4] - 14:23, 20:18, 20:19, 34:22</p> <p>hydra [1] - 24:14</p> <p>hypothetical [1] - 76:25</p>
<p>H</p>		<p>I</p>
<p>half [5] - 94:9, 95:10, 97:24, 98:7, 98:18</p> <p>hall [1] - 26:14</p> <p>Hall [1] - 54:25</p>	<p>Hamilton [3] - 86:14, 86:20, 86:22</p> <p>hammer [1] - 89:18</p> <p>hand [1] - 12:1</p> <p>handed [2] - 48:19, 89:2</p> <p>happy [2] - 74:24, 87:2</p> <p>harass [5] - 11:19, 21:7, 44:10, 77:22</p> <p>harassed [7] - 12:20, 24:23, 26:6, 27:4, 27:24, 41:20, 65:1</p> <p>harassing [1] - 82:7</p> <p>harassment [35] - 7:21, 11:9, 11:10, 11:15, 24:6, 26:6, 28:23, 28:24, 30:25, 41:3, 41:11, 41:16, 41:23, 42:7, 42:15, 45:22, 46:7, 48:24, 51:6, 52:6, 55:17, 59:23, 59:25, 61:5, 63:8, 64:20, 67:12, 70:23, 75:12, 78:21, 79:2, 82:4, 88:6, 88:20, 99:24</p> <p>hard [6] - 12:12, 30:17, 47:15, 62:10, 62:21, 78:17</p> <p>hard-pressed [1] - 12:12</p> <p>harm [1] - 87:20</p> <p>Harris [1] - 5:5</p> <p>HARRIS [1] - 2:8</p> <p>hates [1] - 30:9</p> <p>head [2] - 28:6, 71:2</p> <p>headed [1] - 24:14</p> <p>heal [2] - 73:11, 74:14</p> <p>Health [2] - 73:4, 73:25</p> <p>healthy [1] - 13:19</p> <p>hear [5] - 7:13, 7:20, 17:14, 41:6, 96:1</p> <p>heard [9] - 31:20, 33:4, 44:12, 63:13, 69:15, 75:2, 89:22, 94:14, 100:13</p> <p>hearing [2] - 44:8, 52:20</p> <p>hearings [1] - 56:1</p> <p>hearsay [8] - 25:5, 50:14, 50:15, 52:10, 52:11, 52:12, 52:13, 52:15</p> <p>heavily [3] - 19:18, 19:19, 62:22</p> <p>heavy [1] - 48:19</p> <p>heavy-handed [1] - 48:19</p> <p>held [2] - 80:4, 80:8</p> <p>hello [1] - 41:8</p> <p>help [2] - 32:7, 76:3</p> <p>helped [1] - 76:10</p> <p>HERBERT [1] - 3:7</p> <p>Herbert [1] - 40:1</p> <p>herbert [1] - 40:2</p> <p>herself [2] - 48:20, 92:12</p> <p>hesitate [1] - 74:8</p> <p>hi [1] - 64:9</p> <p>hiding [1] - 8:20</p> <p>highly [2] - 51:8</p> <p>HILL [1] - 2:17</p> <p>himself [3] - 44:17, 57:10, 99:19</p> <p>hinted [1] - 17:9</p> <p>Hinton [19] - 2:21, 13:22, 57:3, 75:3, 75:5, 75:21, 76:4, 76:7, 76:22, 76:24, 77:2, 77:4, 77:5, 77:10, 77:14, 77:23, 78:3, 78:9, 78:13</p> <p>Hinton's [2] - 76:18, 77:22</p> <p>hired [4] - 26:10, 26:12, 26:15, 26:17</p>	<p>history [5] - 9:9, 13:14, 59:18, 67:2, 99:21</p> <p>holding [1] - 57:23</p> <p>holdings [1] - 50:25</p> <p>hole [3] - 69:22, 70:10, 94:21</p> <p>holes [2] - 70:11, 94:15</p> <p>holiday [1] - 31:24</p> <p>home [4] - 18:3, 73:10, 74:13</p> <p>honest [1] - 25:24</p> <p>honestly [2] - 22:24, 85:15</p> <p>Honor [92] - 4:10, 4:12, 4:17, 4:21, 4:25, 5:4, 7:16, 7:24, 8:10, 8:13, 8:14, 8:25, 10:24, 11:18, 12:6, 12:17, 14:2, 14:8, 15:14, 16:1, 16:6, 17:8, 17:9, 22:21, 29:2, 33:4, 33:22, 34:11, 35:1, 35:24, 36:12, 37:1, 37:5, 37:17, 37:21, 38:3, 38:9, 43:10, 45:2, 49:21, 50:5, 50:16, 51:10, 51:21, 52:15, 54:12, 55:3, 56:9, 57:17, 58:16, 60:18, 61:4, 61:9, 61:25, 62:4, 62:7, 63:13, 65:4, 66:4, 67:22, 67:23, 68:12, 70:14, 72:15, 72:23, 75:4, 78:18, 83:15, 87:24, 88:1, 89:1, 89:6, 89:14, 93:4, 93:13, 93:17, 93:18, 94:6, 95:4, 95:10, 96:17, 96:19, 97:19, 98:17, 98:23, 99:7, 99:8, 100:8, 100:20, 102:19</p> <p>Honor's [10] - 8:14, 48:22, 49:12, 60:20, 60:23, 70:8, 77:16, 78:2, 97:18, 99:2</p> <p>HONORABLE [1] - 1:21</p> <p>hoops [1] - 89:23</p> <p>hope [1] - 58:17</p> <p>hopeful [1] - 68:5</p> <p>hopefully [1] - 65:17</p> <p>hoping [1] - 60:14</p> <p>host [1] - 23:11</p> <p>hostile [7] - 7:20, 10:10, 47:23, 55:13, 66:20, 100:1, 103:6</p> <p>hours [8] - 16:4, 24:9, 29:16, 82:23, 83:2, 83:6, 83:10</p> <p>Howard [5] - 26:15, 28:6, 68:22, 68:23, 69:25</p> <p>HUD [1] - 75:9</p> <p>hundred [1] - 75:23</p> <p>hundreds [2] - 79:12, 91:19</p> <p>hurt [1] - 72:7</p> <p>husband [6] - 20:22, 20:25, 35:14, 74:5, 80:7</p> <p>husband's [4] - 14:23, 20:18, 20:19, 34:22</p> <p>hydra [1] - 24:14</p> <p>hypothetical [1] - 76:25</p>

<p>identifying [2] - 62:18, 100:9 identities [1] - 19:23 identity [1] - 72:11 imaged [1] - 21:24 images [3] - 21:24, 22:15, 22:18 imagine [1] - 36:21 impact [1] - 85:9 impeach [2] - 66:14, 77:2 impeachment [6] - 46:25, 47:3, 48:11, 66:16, 67:14, 70:13 imperative [1] - 84:20 implicates [1] - 103:7 implications [1] - 6:14 implied [1] - 27:23 implore [1] - 48:3 importance [2] - 24:20, 25:14 important [5] - 5:24, 19:24, 26:19, 56:7, 73:18 impossible [1] - 55:25 impressed [1] - 26:16 impression [1] - 22:22 improper [1] - 8:2 inadmissible [2] - 52:1, 52:3 inapposite [1] - 86:16 inappropriately [2] - 25:1, 25:3 incident [5] - 77:25, 78:21, 83:3, 83:5, 88:19 inclined [1] - 17:10 include [2] - 87:3, 89:9 included [8] - 7:14, 7:17, 10:8, 31:9, 35:2, 73:2, 74:16, 88:20 includes [1] - 23:1 including [8] - 7:21, 17:1, 18:22, 19:8, 39:7, 58:9, 62:1, 68:20 incomplete [3] - 31:16, 94:13, 94:19 inconvenience [1] - 9:6 inconveniences [1] - 8:5 inconveniencing [1] - 10:1 incredibly [1] - 96:4 independently [1] - 27:16 indicate [1] - 53:22 indicated [1] - 82:21 indicates [1] - 102:22 indicating [1] - 83:4 indication [1] - 81:1 individual [5] - 6:23, 43:22, 43:25, 91:4, 91:6 individually [1] - 78:9 individuals [4] - 41:20, 47:19, 79:4, 103:6 inefficient [1] - 44:5 inform [2] - 17:22, 87:12 information [34] - 6:25, 9:23, 10:21, 12:10, 14:10, 14:12, 16:21, 16:23, 18:16, 18:18, 19:11, 34:15, 36:21, 43:24, 44:13, 45:7, 47:12, 53:22, 56:19, 58:8, 73:15, 78:3, 82:18, 84:8, 85:25, 86:1, 90:10, 91:17, 92:19, 92:23, 93:2, 97:25, 99:20, 100:9</p>	<p>inherent [1] - 52:22 inquiry [1] - 55:6 insinuate [1] - 58:20 insist [1] - 103:5 instance [5] - 9:1, 10:1, 31:10, 39:16, 81:13 instances [1] - 10:10 instead [1] - 94:22 instruction [1] - 49:12 insufficient [1] - 43:21 integrity [2] - 5:24, 5:25 intended [1] - 48:21 intensive [2] - 90:17, 102:6 intent [1] - 69:12 interact [1] - 85:23 interaction [1] - 28:8 interactions [2] - 46:14, 55:10 interest [3] - 32:17, 56:7, 89:21 interested [11] - 2:14, 2:17, 2:20, 2:23, 3:2, 3:5, 5:9, 5:11, 44:20, 68:12, 95:18 interesting [4] - 22:2, 31:2, 42:9, 88:3 intern [3] - 60:17, 63:20, 65:7 interpreted [1] - 90:6 interview [13] - 37:22, 55:5, 58:11, 58:15, 62:9, 62:13, 73:16, 78:5, 87:5, 87:11, 89:3, 92:7, 99:3 interviewed [5] - 78:12, 78:13, 89:4, 92:1, 92:13 interviews [1] - 92:9 intimidate [1] - 48:21 intimidating [1] - 13:19 introduce [7] - 7:1, 11:21, 49:15, 50:22, 51:12, 51:13, 54:17 introduced [1] - 57:10 introducing [1] - 52:22 investigation [16] - 6:9, 6:11, 13:21, 14:10, 23:16, 24:4, 29:22, 37:17, 50:8, 50:11, 54:15, 54:19, 55:4, 65:24, 69:7, 94:3 investigations [4] - 5:25, 6:2, 6:6, 51:22 investigative [2] - 6:25, 52:24 investigator [1] - 77:11 investigators [8] - 29:13, 50:18, 50:21, 50:23, 50:24, 50:25, 55:8, 76:14 investigators' [1] - 51:1 involved [3] - 5:14, 28:7, 65:23 involvement [1] - 46:9 involving [1] - 103:21 iPhone [1] - 22:1 irony [1] - 30:21 irrelevant [3] - 24:24, 24:25, 37:6 issue [15] - 9:22, 14:4, 22:20, 39:2, 44:2, 54:4, 54:6, 65:11, 66:2, 69:20, 71:3, 82:18, 88:9, 98:13, 100:8 issued [3] - 27:6, 27:17, 56:23 issues [25] - 5:16, 5:23, 9:16, 9:19, 15:23, 16:7, 17:14, 32:25, 36:8, 36:18, 40:14, 43:20, 44:10, 52:22, 65:15, 67:8, 69:23, 70:1, 79:16, 88:18, 88:20,</p>	<p>88:21, 89:19, 90:2, 90:25 issuing [2] - 9:11, 65:13 items [1] - 87:16 itself [1] - 73:5</p> <p style="text-align: center;">J</p> <p>Jackson [9] - 20:4, 25:18, 25:20, 25:22, 26:3, 37:4, 37:6, 55:7, 55:10 Jackson's [6] - 25:12, 25:16, 32:20, 55:9, 55:11, 55:21 James [1] - 54:22 job [3] - 28:15, 76:4, 76:11 John [1] - 4:12 JOHN [1] - 1:25 joining [1] - 13:15 joint [2] - 17:18, 43:22 jointly [1] - 43:23 joking [1] - 102:5 Joseph [1] - 5:2 Journal [1] - 25:19 judge [2] - 54:18, 91:22 JUDGE [1] - 1:21 Judge [4] - 17:23, 22:23, 54:25, 84:24 judgement [1] - 6:20 Judiciary [3] - 6:12, 23:18, 91:3 July [1] - 80:25 jump [1] - 89:22 June [2] - 13:21, 40:7 jurist [1] - 48:1 jury [3] - 7:20, 16:19, 54:17 Justice [1] - 30:8</p> <p style="text-align: center;">K</p> <p>Kaitlin [19] - 3:2, 31:20, 31:23, 39:11, 57:15, 92:3, 92:8, 93:19, 93:24, 94:1, 94:25, 95:7, 95:18, 96:7, 96:11, 96:18, 96:24, 99:14 Kaitlin's [9] - 31:21, 94:12, 94:18, 99:5, 99:17, 100:5, 100:20, 101:10, 101:17 Karen [1] - 2:21 Katherine [1] - 4:18 KATHERINE [1] - 2:4 Kayasha [1] - 5:2 keep [3] - 24:2, 28:16, 102:1 kept [1] - 72:8 kick [1] - 32:8 kicking [1] - 61:12 kid [1] - 30:5 kids' [1] - 20:17 kill [1] - 11:21 kind [2] - 89:17, 96:7 kinds [1] - 99:7 knowledge [3] - 25:5, 26:1, 49:3 known [1] - 41:21 knows [9] - 5:13, 20:9, 26:6, 29:24, 36:9, 43:24, 46:15, 48:11, 92:9 Korman [1] - 4:18 KORMAN [1] - 2:3</p>
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<p style="text-align: center;">L</p> <p>labeled [1] - 61:22</p> <p>laborious [1] - 44:24</p> <p>lack [2] - 53:22, 79:17</p> <p>lacking [4] - 7:5, 7:6, 38:11, 56:9</p> <p>lacks [2] - 53:25, 54:18</p> <p>landscape [1] - 17:22</p> <p>language [1] - 52:3</p> <p>large [4] - 19:21, 19:24, 27:9, 62:22</p> <p>last [12] - 5:16, 30:2, 30:3, 31:21, 35:23, 35:24, 37:11, 57:7, 62:7, 74:14, 78:2, 92:3</p> <p>latitude [1] - 49:10</p> <p>law [8] - 7:19, 11:18, 16:17, 34:13, 49:7, 51:2, 52:3, 67:18</p> <p>Law [1] - 4:14</p> <p>LAW [2] - 2:14, 2:23</p> <p>lawsuit [2] - 18:4, 27:20</p> <p>lawsuits [2] - 79:6</p> <p>lawyer [3] - 24:11, 24:12, 30:1</p> <p>lawyers [5] - 22:8, 30:6, 33:18, 33:19, 56:7</p> <p>layers [2] - 52:16, 55:23</p> <p>layout [1] - 100:23</p> <p>LDH)(TAM [2] - 1:4, 1:13</p> <p>leading [1] - 31:19</p> <p>learn [3] - 9:10, 97:21, 97:23</p> <p>learned [3] - 25:16, 30:24, 45:23</p> <p>least [5] - 45:5, 65:13, 75:22, 77:14, 101:12</p> <p>leave [2] - 60:6, 89:14</p> <p>leaving [1] - 68:15</p> <p>left [16] - 27:22, 27:24, 28:3, 28:4, 28:14, 28:19, 28:23, 28:25, 59:23, 60:2, 60:6, 67:12, 73:10, 93:10, 94:1</p> <p>legal [7] - 17:22, 24:24, 37:5, 51:3, 51:7, 52:2, 55:12</p> <p>legally [3] - 34:9, 50:7, 50:10</p> <p>legislation [1] - 91:18</p> <p>legislative [9] - 88:15, 88:19, 88:25, 90:2, 90:4, 90:5, 90:11, 90:18, 91:2</p> <p>legislator [2] - 91:4, 92:13</p> <p>legislator's [1] - 91:6</p> <p>legislators [1] - 90:7</p> <p>legislature [1] - 6:1</p> <p>length [2] - 52:20, 80:5</p> <p>lengthy [2] - 21:18, 23:15</p> <p>Leo [1] - 4:18</p> <p>LEO [1] - 2:3</p> <p>less [4] - 37:8, 78:5, 97:16, 98:14</p> <p>letter [5] - 5:20, 7:19, 13:22, 17:18, 89:17</p> <p>letters [2] - 30:3, 30:10</p> <p>level [1] - 11:5</p> <p>levels [1] - 66:13</p> <p>leverage [1] - 48:13</p> <p>liar [2] - 61:23, 63:7</p> <p>LICUL [70] - 1:25, 4:10, 7:16, 10:24,</p>	<p>11:17, 12:5, 12:13, 12:17, 13:1, 13:4, 13:7, 13:10, 15:5, 15:8, 15:14, 15:19, 15:22, 15:25, 16:10, 17:1, 17:3, 17:8, 33:4, 33:6, 33:13, 33:17, 34:11, 34:18, 35:1, 35:4, 35:6, 35:23, 36:12, 36:23, 37:15, 38:3, 38:6, 45:16, 46:23, 47:2, 47:10, 48:14, 49:14, 49:17, 49:19, 49:21, 50:5, 50:7, 50:10, 50:15, 50:19, 50:23, 51:10, 51:16, 51:20, 51:25, 52:4, 52:8, 52:11, 52:14, 52:18, 53:10, 53:14, 54:1, 54:6, 54:9, 54:12, 55:2, 55:9, 56:9</p> <p>Licul [27] - 4:10, 7:13, 10:7, 11:12, 18:24, 19:7, 19:12, 20:7, 20:9, 20:17, 26:23, 32:12, 34:7, 38:12, 38:23, 41:1, 41:25, 44:21, 45:15, 47:25, 51:19, 53:12, 66:18, 66:23, 72:3, 86:3, 103:5</p> <p>Licul's [2] - 17:15, 71:6</p> <p>lie [1] - 28:19</p> <p>Lieutenant [1] - 26:15</p> <p>life [3] - 25:10, 69:5, 82:8</p> <p>lift [1] - 100:7</p> <p>light [2] - 60:6, 60:7</p> <p>likely [3] - 10:21, 44:9, 51:4</p> <p>likewise [1] - 83:9</p> <p>limine [1] - 53:5</p> <p>limit [5] - 16:14, 59:2, 80:21, 83:9</p> <p>limitation [1] - 80:18</p> <p>limitations [1] - 80:25</p> <p>limited [11] - 11:17, 13:4, 42:9, 42:18, 45:18, 50:4, 66:7, 79:7, 80:20, 83:7, 86:17</p> <p>limits [7] - 47:10, 61:1, 68:2, 70:7, 72:16, 83:15</p> <p>Limmiatis [11] - 57:5, 78:20, 78:21, 80:1, 80:5, 80:6, 80:11, 80:22, 82:22, 82:24, 83:1</p> <p>Lindsey [21] - 2:15, 4:15, 23:3, 26:1, 26:25, 27:11, 28:20, 30:20, 30:21, 30:23, 31:4, 31:8, 39:3, 64:9, 65:1, 68:19, 69:12, 69:16, 92:4, 96:8, 96:12</p> <p>LINDSEY [1] - 1:17</p> <p>line [2] - 29:15, 47:12</p> <p>lines [1] - 51:5</p> <p>Liss [15] - 20:4, 25:12, 25:16, 25:18, 25:20, 32:20, 37:4, 37:6, 39:11, 55:9, 55:10, 55:11, 76:12, 76:22</p> <p>Liss-Jackson [6] - 20:4, 25:18, 25:20, 37:4, 37:6, 55:10</p> <p>Liss-Jackson's [5] - 25:12, 25:16, 32:20, 55:9, 55:11</p> <p>listing [1] - 85:25</p> <p>litigants [1] - 47:17</p> <p>litigate [6] - 8:3, 22:23, 32:15, 69:22, 69:23, 69:24</p> <p>litigated [2] - 33:11, 36:25</p> <p>litigation [4] - 8:12, 10:12, 32:18, 77:18</p> <p>live [2] - 33:16, 72:19</p> <p>LLP [9] - 1:23, 2:5, 2:17, 2:20, 3:2, 3:5, 4:11, 4:13, 4:22</p>	<p>local [1] - 43:18</p> <p>log [2] - 90:19, 91:8</p> <p>look [18] - 17:23, 18:19, 32:14, 44:22, 47:15, 47:22, 48:16, 55:14, 63:2, 63:7, 80:13, 80:15, 81:6, 81:9, 95:21, 102:13, 103:17</p> <p>looked [3] - 39:8, 78:24, 98:12</p> <p>looking [9] - 25:21, 47:12, 48:9, 67:17, 79:24, 80:20, 83:14, 92:24, 97:2</p> <p>looks [3] - 26:10, 26:18, 30:22</p> <p>losing [1] - 9:20</p> <p>lost [2] - 9:20, 61:17</p> <p>love [3] - 28:16, 32:6, 87:9</p> <p>Lucchese [1] - 3:9</p> <p>Lyons [1] - 5:2</p> <p style="text-align: center;">M</p> <p>Mad [2] - 37:7, 55:18</p> <p>MAGISTRATE [1] - 1:21</p> <p>mail [1] - 97:5</p> <p>main [2] - 5:11, 70:20</p> <p>maintained [2] - 84:21, 85:12</p> <p>manner [1] - 29:14</p> <p>March [1] - 81:22</p> <p>mark [1] - 5:22</p> <p>massive [1] - 28:12</p> <p>material [2] - 46:25, 47:3</p> <p>materials [3] - 6:4, 52:24, 89:5</p> <p>matter [5] - 79:8, 85:9, 99:14, 99:22, 103:25</p> <p>matters [3] - 40:21, 84:13, 100:16</p> <p>McGrath [13] - 57:6, 78:20, 78:22, 80:6, 80:23, 81:10, 81:15, 81:17, 81:21, 81:23, 82:6, 82:23, 82:24</p> <p>mean [20] - 11:9, 11:19, 11:21, 13:19, 13:22, 23:3, 30:20, 48:9, 48:16, 50:3, 50:21, 51:16, 53:6, 55:18, 61:21, 62:20, 67:15, 70:10, 79:24, 83:3</p> <p>meaningful [1] - 47:16</p> <p>meaningfully [4] - 6:18, 6:20, 56:4, 90:24</p> <p>means [2] - 7:24, 18:8</p> <p>meant [2] - 12:19, 21:6</p> <p>meantime [2] - 43:19, 56:6</p> <p>media [4] - 31:7, 63:22, 64:7, 65:6</p> <p>medical [1] - 21:11</p> <p>Medium [1] - 31:18</p> <p>meet [31] - 14:11, 14:22, 30:4, 30:13, 38:25, 47:16, 59:4, 62:11, 80:23, 80:25, 83:12, 84:15, 88:11, 90:24, 91:14, 92:17, 94:20, 95:3, 95:10, 95:17, 97:1, 97:4, 97:20, 98:7, 98:21, 100:21, 101:5, 101:24, 102:10, 102:12</p> <p>meet-and-confer [12] - 80:25, 84:15, 91:14, 92:17, 94:20, 95:3, 95:17, 97:1, 97:4, 98:21, 102:12</p> <p>meet-and-confers [12] - 30:4, 30:13, 80:23, 83:12, 88:11, 95:10, 97:20, 98:7, 100:21, 101:5, 101:24, 102:10</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

meeting [3] - 28:14, 43:12, 44:20
meetings [1] - 28:5
Melissa [5] - 2:11, 5:3, 41:8, 42:5, 42:21
member [1] - 18:17
memorialize [1] - 74:17
memorialized [1] - 73:7
memos [8] - 28:3, 37:22, 58:11, 58:15, 62:9, 62:13, 87:5, 99:3
Menesque [2] - 37:7, 55:18
mention [2] - 8:13, 97:18
mentioned [6] - 7:17, 39:19, 88:7, 90:3, 93:18, 98:14
MERKL [1] - 1:21
mess [2] - 17:19, 38:12
message [3] - 22:3, 64:9, 69:3
messages [9] - 20:14, 22:5, 31:9, 63:23, 64:6, 90:9, 95:23, 96:12, 97:8
met [6] - 6:18, 6:20, 9:15, 72:11, 75:19, 95:12
method [1] - 43:25
Michele [1] - 3:9
microphone [1] - 57:22
middle [3] - 28:18, 80:8, 93:9
midst [1] - 99:1
might [10] - 5:18, 45:5, 61:7, 61:18, 63:13, 92:23, 95:1, 95:7, 98:16, 103:20
mind [2] - 25:12, 57:23
minimize [1] - 87:20
minimum [1] - 38:23
minor [2] - 8:4, 66:21
minute [3] - 68:8, 69:19, 100:18
mistreated [1] - 12:2
misunderstood [1] - 12:18
mixed [1] - 51:2
MLuccheseEDNY@gmail.com [1] - 3:12
mom [1] - 82:7
moment [1] - 47:7
month [1] - 60:16
months [4] - 26:15, 28:4, 28:9, 94:8
moral [1] - 61:9
morass [1] - 23:25
morning [9] - 4:2, 4:10, 4:12, 4:17, 4:21, 4:25, 5:4, 5:7, 71:6
MORRISON [1] - 2:20
Morvillo [1] - 5:1
MORVILLO [1] - 2:11
most [5] - 13:22, 24:7, 34:1, 41:6, 89:16
mother [1] - 79:5
motion [35] - 8:21, 9:22, 12:24, 13:4, 14:7, 15:5, 19:10, 25:13, 32:9, 32:16, 33:11, 36:15, 36:17, 37:23, 40:18, 41:22, 42:1, 53:5, 56:1, 62:5, 65:9, 89:7, 89:9, 89:14, 89:17, 89:25, 96:13, 96:16, 96:17, 96:19, 97:15, 98:24, 100:5, 100:23, 102:6
motion-to-compel [1] - 102:6
motions [15] - 5:15, 5:17, 6:21, 9:2,

13:15, 13:16, 18:21, 36:13, 36:17, 43:14, 43:15, 43:20, 44:4, 89:11, 89:17
motivations [2] - 60:15, 70:13
motive [2] - 31:1, 69:12
move [6] - 44:7, 44:15, 44:16, 45:12, 56:5, 85:5
moving [1] - 45:6
MR [90] - 4:10, 4:12, 5:4, 7:16, 10:24, 11:17, 12:5, 12:13, 12:17, 13:1, 13:4, 13:7, 13:10, 15:5, 15:8, 15:14, 15:19, 15:22, 15:25, 16:10, 17:1, 17:3, 17:8, 33:4, 33:6, 33:13, 33:17, 34:11, 34:18, 35:1, 35:4, 35:6, 35:23, 36:12, 36:23, 37:15, 38:3, 38:6, 39:24, 40:1, 43:10, 45:2, 45:16, 46:23, 47:2, 47:10, 48:14, 49:14, 49:17, 49:19, 49:21, 50:5, 50:7, 50:10, 50:15, 50:19, 50:23, 51:10, 51:16, 51:20, 51:25, 52:4, 52:8, 52:11, 52:14, 52:18, 53:10, 53:14, 54:1, 54:6, 54:9, 54:12, 55:2, 55:9, 56:9, 63:16, 63:19, 68:7, 72:23, 83:22, 84:11, 87:1, 87:8, 87:22, 87:24, 90:20, 90:22, 93:4, 93:9, 93:12
MS [64] - 4:14, 4:17, 4:21, 4:25, 17:23, 19:21, 20:22, 20:25, 23:17, 24:25, 27:11, 27:14, 32:10, 33:21, 33:24, 37:14, 37:21, 37:25, 38:17, 39:2, 39:23, 40:3, 40:17, 40:23, 43:4, 57:5, 57:8, 57:14, 57:17, 58:16, 59:4, 59:6, 59:7, 59:24, 60:8, 62:25, 63:13, 64:17, 64:24, 65:4, 66:2, 66:4, 66:7, 66:22, 67:15, 68:10, 69:21, 70:5, 72:2, 75:4, 78:16, 78:18, 91:20, 91:22, 93:8, 93:17, 100:13, 100:18, 100:20, 101:4, 101:8, 102:8, 102:17, 102:19
mud [2] - 61:21, 72:19
multi [1] - 24:14
multi-hydra-headed [1] - 24:14
murder [1] - 11:20
must [3] - 7:20, 41:20, 95:13
myriad [1] - 36:7

N

nail [1] - 70:13
NAJMI [8] - 2:23, 2:25, 87:24, 90:20, 90:22, 93:4, 93:9, 93:12
najmi [1] - 92:16
Najmi [3] - 57:11, 87:23, 90:3
name [13] - 23:3, 27:1, 31:21, 39:25, 46:1, 57:7, 61:21, 63:24, 78:10, 92:3, 99:17, 100:5, 100:9
named [7] - 40:15, 74:16, 78:8, 78:12, 86:5, 86:9, 95:23
names [6] - 5:10, 20:2, 20:5, 62:20, 99:8, 99:10
narrow [10] - 6:19, 29:4, 30:18, 44:16, 44:21, 56:4, 58:17, 62:7, 90:24, 97:1
narrowed [1] - 10:1

narrowing [3] - 8:14, 9:1, 72:6
nature [1] - 76:13
naught [1] - 27:20
necessarily [4] - 12:5, 45:8, 45:9, 51:8
necessary [1] - 36:10
need [41] - 8:16, 10:18, 16:18, 18:19, 18:21, 19:11, 22:25, 23:5, 23:9, 24:12, 24:13, 24:20, 25:5, 25:11, 34:16, 39:7, 42:4, 42:7, 42:11, 43:2, 44:15, 46:15, 46:16, 47:8, 48:5, 48:6, 53:4, 53:6, 53:7, 56:13, 56:20, 65:2, 69:11, 82:13, 84:6, 90:18, 91:9, 98:8, 100:16, 103:3, 103:20
needed [3] - 14:11, 18:12, 39:1
needing [1] - 23:15
needs [4] - 7:11, 16:22, 18:8, 96:5
negotiate [2] - 42:10, 43:4
negotiated [1] - 42:16
negotiating [1] - 42:17
never [19] - 12:20, 35:7, 59:16, 65:1, 65:4, 72:10, 72:11, 73:2, 73:19, 73:20, 75:19, 75:20, 88:5, 93:24, 93:25, 96:22, 98:13, 99:17
nevertheless [2] - 75:21, 76:17
NEW [2] - 1:1, 1:8
new [1] - 18:16
New [28] - 1:6, 1:24, 2:2, 2:6, 2:8, 2:9, 2:12, 2:15, 2:18, 2:21, 2:24, 3:3, 3:6, 3:11, 4:5, 5:5, 10:16, 43:7, 45:1, 45:9
newspaper [1] - 75:14
next [2] - 57:4, 71:8
nobody [1] - 56:2
non [4] - 27:25, 57:14, 66:14, 91:8
non-categorical [1] - 91:8
non-disclosure [1] - 27:25
non-party [2] - 57:14, 66:14
none [5] - 18:12, 28:2, 31:9, 32:3, 60:19
nonparties [11] - 9:6, 10:2, 14:14, 34:2, 38:19, 39:14, 44:7, 44:8, 79:7, 83:13, 94:15
nonparty [11] - 4:14, 13:18, 66:15, 77:4, 81:8, 81:16, 82:7, 88:5, 93:19, 95:10, 98:22
nonparty's [2] - 83:8, 98:18
noon [4] - 15:24, 53:1, 53:2, 68:6
Noonan [1] - 4:23
notable [1] - 85:25
notably [1] - 7:6
note [1] - 73:18
noted [2] - 6:13, 70:14
notes [3] - 87:5, 87:11, 89:3
nothing [19] - 31:17, 41:15, 42:4, 54:19, 61:6, 70:17, 73:1, 74:6, 74:17, 74:19, 77:5, 77:16, 81:24, 82:4, 86:5, 86:15, 92:11, 97:8, 97:15
notice [1] - 41:2
notion [1] - 65:23
notwithstanding [2] - 41:13, 41:17
number [10] - 5:15, 7:25, 30:4, 35:12, 35:13, 36:22, 42:19, 42:22, 78:11,

<p>83:10 Number [1] - 72:25 numerous [1] - 9:13 NY [1] - 2:21</p>	<p>opportunity [8] - 7:17, 9:1, 16:20, 33:14, 41:24, 72:24, 87:12, 98:15 oppose [1] - 12:12 opposed [2] - 12:22, 12:23 opposing [2] - 16:1, 16:7 opt [1] - 28:1 options [1] - 53:13 order [17] - 16:22, 34:17, 44:15, 56:22, 82:17, 84:7, 84:14, 84:17, 84:18, 84:22, 85:13, 85:15, 86:19, 87:17, 100:4, 100:6, 100:10 ordered [1] - 84:23 originally [1] - 34:6 ourself [1] - 45:3 ourselves [1] - 23:20 outcome [1] - 91:18 outline [1] - 21:18 outlined [1] - 47:24 outreach [1] - 95:24 outside [3] - 46:18, 60:10, 62:3 outspoken [3] - 75:12, 77:23, 88:17 outstanding [1] - 36:18 overall [1] - 7:4 overcome [2] - 10:22, 12:2 overkill [2] - 15:15, 16:12 overlap [2] - 73:20, 73:22 overlapped [1] - 92:2 overlapping [1] - 47:21 own [8] - 9:13, 23:10, 24:4, 25:10, 31:15, 51:6, 85:10, 86:18</p>	<p>participate [2] - 41:10, 41:16 participated [1] - 41:22 participating [1] - 41:14 particular [6] - 18:17, 52:9, 54:21, 64:4, 64:12, 89:22 particularly [1] - 85:8 parties [50] - 4:8, 5:9, 5:11, 5:12, 6:17, 7:2, 14:13, 14:17, 14:22, 32:11, 32:13, 32:17, 36:5, 36:25, 37:2, 38:16, 38:23, 40:4, 40:5, 41:7, 41:18, 42:12, 42:19, 42:25, 44:6, 44:19, 47:17, 56:3, 56:6, 56:16, 56:20, 57:13, 58:4, 59:12, 60:21, 61:1, 61:24, 68:1, 70:8, 72:5, 72:16, 74:7, 79:6, 83:25, 86:4, 86:5, 89:19, 89:22, 91:10, 102:21 partner [1] - 99:22 party [27] - 2:15, 2:18, 2:21, 2:24, 3:2, 3:5, 13:6, 14:6, 15:2, 17:16, 31:24, 36:2, 36:24, 43:2, 50:2, 57:14, 58:22, 64:6, 66:14, 66:21, 67:19, 69:24, 73:18, 73:19, 81:22, 82:1, 88:5 past [3] - 59:11, 60:16, 99:22 payroll [1] - 28:12 Pearl [1] - 2:18 pending [10] - 5:15, 5:17, 9:2, 14:7, 18:21, 40:18, 84:1, 89:11, 96:14, 96:16 penultimate [1] - 95:16 people [27] - 10:14, 10:20, 11:21, 12:1, 12:7, 12:9, 12:15, 19:22, 20:1, 24:14, 26:18, 41:5, 43:17, 43:18, 48:5, 48:8, 50:18, 51:5, 55:5, 58:12, 68:22, 89:16, 90:14, 90:23, 91:15, 95:25, 103:20</p>
<p style="text-align: center;">O</p> <p>OAG [4] - 94:15, 95:5, 95:23, 99:3 oath [1] - 49:9 object [2] - 62:17, 92:3 objecting [3] - 13:8, 13:10, 13:12 objection [2] - 58:7, 99:9 objections [5] - 13:12, 16:2, 40:4, 85:4, 88:24 obligation [1] - 34:11 obligations [2] - 9:14, 22:17 observe [1] - 85:23 obviously [8] - 13:11, 16:24, 17:13, 57:20, 62:18, 67:22, 89:8, 103:19 occasion [1] - 90:4 occasionally [1] - 62:21 occurred [1] - 78:1 ocean [1] - 67:17 Ocean [1] - 9:20 OF [3] - 1:1, 1:20, 2:23 offer [1] - 35:10 offered [3] - 8:18, 18:24, 35:11 Office [29] - 6:1, 14:21, 15:24, 18:15, 23:16, 25:4, 31:4, 38:2, 38:5, 38:25, 39:4, 39:12, 39:15, 39:18, 56:12, 56:21, 58:8, 58:10, 58:19, 58:23, 58:25, 60:4, 62:9, 62:14, 87:5, 94:13, 94:24, 99:12, 103:22 office [9] - 4:16, 53:20, 77:9, 77:12, 78:6, 78:23, 81:11, 92:1, 94:11 OFFICE [1] - 2:23 official [1] - 6:5 Official [1] - 3:10 often [1] - 54:16 old [1] - 85:1 Old [1] - 16:17 once [9] - 24:3, 28:1, 64:12, 65:10, 83:1, 97:8, 97:14, 98:7, 98:14 one [69] - 8:1, 8:13, 8:24, 9:3, 9:17, 9:20, 12:21, 15:2, 16:3, 17:24, 19:14, 20:3, 20:8, 23:25, 24:1, 24:18, 24:19, 25:15, 26:4, 28:5, 29:8, 31:13, 33:6, 36:10, 36:13, 36:17, 37:4, 38:13, 40:8, 40:17, 43:15, 43:23, 44:2, 45:10, 46:1, 46:4, 47:22, 49:13, 53:19, 54:3, 54:15, 54:24, 57:24, 58:4, 65:1, 68:8, 68:11, 68:15, 68:20, 69:11, 69:19, 72:15, 73:25, 74:16, 78:9, 79:4, 82:19, 84:23, 85:1, 89:6, 90:21, 91:12, 91:22, 91:23, 93:4, 93:21, 94:7, 97:18, 100:18 ones [1] - 72:17 open [1] - 63:9 openness [1] - 59:7 opinion [1] - 56:23 opponent [2] - 53:20, 53:21</p>	<p style="text-align: center;">P</p> <p>package [1] - 88:19 pact [1] - 50:2 page [2] - 54:15, 71:8 pages [15] - 22:15, 31:9, 31:12, 39:4, 39:8, 73:7, 75:23, 76:1, 76:7, 76:12, 79:12, 91:19, 94:5, 94:7 pale [1] - 14:25 Palermo [2] - 5:5, 43:8 PALERMO [4] - 2:9, 5:4, 43:10, 45:2 pandemic [1] - 73:5 paper [1] - 20:4 papers [12] - 7:9, 20:20, 35:2, 59:21, 61:22, 66:19, 67:7, 67:8, 100:22, 101:23, 102:3 parade [1] - 11:14 paragraph [1] - 74:16 paragraphs [4] - 18:2, 23:2, 23:4, 27:1 parameters [3] - 7:2, 55:24, 86:19 paraphrasing [1] - 13:25 Parish [1] - 63:24 PARK [2] - 63:16, 63:19 part [26] - 6:16, 12:24, 14:10, 15:21, 19:14, 25:13, 29:9, 29:14, 29:17, 29:23, 29:24, 32:11, 34:1, 34:7, 46:21, 69:15, 73:11, 75:22, 78:2, 89:9, 89:15, 90:10, 102:4, 102:5, 103:8</p>	<p>per [2] - 51:22, 52:1 perceive [1] - 25:2 percent [2] - 19:25 perfect [1] - 35:16 perfectly [3] - 15:10, 16:5, 37:3 perhaps [5] - 49:1, 49:23, 53:6, 60:21, 65:20 perimeter [2] - 11:25, 75:7 period [1] - 93:22 periods [1] - 88:13 perjured [1] - 48:20 perjury [1] - 48:19 permission [1] - 89:24 permitted [1] - 43:18 perpetrator [2] - 48:24, 49:4 perpetrator's [1] - 7:21 Perrotta [11] - 20:13, 20:15, 20:16, 20:18, 21:4, 34:21, 35:7, 35:11, 35:13, 48:14, 48:17 Perrotta's [2] - 21:20, 22:6 Perry [11] - 4:14, 7:22, 10:12, 47:24, 57:21, 58:2, 63:19, 69:18, 69:19, 70:4 PERRY [19] - 2:14, 2:16, 4:14, 57:17, 58:16, 59:4, 59:7, 59:24, 60:8, 62:25, 65:4, 66:2, 66:4, 66:7, 66:22, 67:15, 69:21, 70:5, 72:2 person [9] - 25:2, 59:24, 60:13, 64:11,</p>

64:12, 64:15, 66:17, 82:25, 99:18
personal [11] - 25:5, 26:1, 26:8, 62:18,
 73:14, 73:17, 74:5, 90:1, 99:20, 99:22,
 99:25
personally [1] - 24:8
persons [1] - 90:9
perspective [2] - 84:9, 99:13
pertaining [2] - 10:21, 84:4
pest [1] - 14:19
PETRINO [1] - 2:4
Petrino [1] - 4:18
petty [1] - 8:4
phone [28] - 9:9, 9:20, 14:23, 14:24,
 20:18, 21:2, 21:5, 21:22, 34:22, 34:23,
 35:11, 35:12, 35:19, 48:9, 70:15,
 70:16, 97:24, 98:3, 98:8, 98:12, 98:14,
 98:15, 98:18, 98:19
phones [3] - 20:18, 21:23, 22:16
photo [1] - 82:2
photographs [1] - 81:21
photos [1] - 81:23
picked [1] - 35:8
pictures [1] - 80:6
piece [1] - 49:25
pieces [1] - 14:11
Pittsford [1] - 2:9
place [8] - 48:16, 67:4, 72:18, 81:11,
 83:15, 84:14, 100:2, 100:4
Plaintiff [3] - 1:5, 1:13, 1:23
plaintiff [12] - 4:9, 6:7, 6:17, 21:22,
 39:20, 61:7, 67:19, 78:12, 93:19,
 98:21, 103:12, 103:14
plaintiff's [11] - 16:16, 17:25, 18:19,
 22:11, 27:19, 29:12, 29:18, 41:19,
 44:12, 71:5, 88:8
plaintiffs [1] - 33:19
plan [3] - 16:19, 33:2, 51:12
plane [2] - 69:15, 69:17
planning [1] - 15:17
play [4] - 16:11, 68:21, 84:9, 86:23
plays [1] - 27:9
Plaza [2] - 3:2, 3:10
plead [1] - 71:5
plenty [2] - 60:25, 83:4
PLLC [4] - 2:1, 2:8, 4:19, 5:5
point [25] - 9:20, 15:14, 16:12, 17:14,
 22:24, 30:2, 46:5, 47:11, 48:22, 51:21,
 52:17, 55:2, 65:5, 66:22, 68:11, 69:21,
 73:1, 80:3, 81:12, 82:5, 91:22, 94:19,
 95:5, 101:25
points [4] - 18:7, 20:7, 63:14, 92:16
poker [1] - 68:21
POLICE [1] - 1:8
police [1] - 11:1
Police [8] - 2:9, 4:6, 5:6, 10:16, 21:9,
 43:7, 45:1, 45:9
political [2] - 28:18, 60:15
portion [2] - 51:12, 78:5
portions [3] - 49:16, 49:20, 49:22

pose [1] - 17:24
posed [2] - 17:25, 62:8
posing [1] - 24:2
position [12] - 45:10, 46:24, 47:8, 58:14,
 63:10, 64:25, 67:11, 70:5, 81:11,
 81:12, 87:4, 90:8
positioning [1] - 92:19
positive [2] - 42:16, 42:18
possesses [1] - 77:14
possible [3] - 17:11, 66:11, 91:10
possibly [3] - 72:13, 96:24, 98:1
Post [1] - 75:14
post [1] - 94:24
potential [3] - 67:13, 84:12, 85:11
potentially [2] - 77:17, 90:17
PR [1] - 11:2
practically [1] - 17:21
practice [5] - 15:5, 32:16, 33:11, 98:24,
 102:6
pre [3] - 32:15, 33:11, 89:17
pre-litigate [1] - 32:15
pre-litigated [1] - 33:11
pre-motion [1] - 89:17
precedent [1] - 67:18
precisely [2] - 25:10, 38:17
precluded [1] - 71:4
Preet [1] - 54:23
prefer [4] - 18:5, 24:14, 26:20, 29:22
preference [1] - 16:25
prejudice [2] - 41:6, 41:7
prejudicial [1] - 51:8
prep [1] - 19:6
prepare [2] - 23:1, 24:5
prepared [7] - 10:3, 21:19, 36:23, 36:24,
 56:17, 91:9, 97:12
present [7] - 5:9, 8:8, 16:18, 34:8,
 55:24, 68:22, 92:19
presentation [1] - 71:6
presently [2] - 6:24, 84:14
press [10] - 25:25, 39:5, 66:23, 74:1,
 76:18, 80:4, 80:8, 87:19, 92:19
pressed [1] - 12:12
pressing [1] - 36:7
presumably [2] - 46:1, 80:14
presume [1] - 82:16
presuming [1] - 87:16
pretty [8] - 5:22, 13:19, 13:20, 27:8,
 30:9, 30:22, 48:19, 52:2
previewing [1] - 87:5
previously [3] - 87:19, 90:4, 91:1
primarily [1] - 76:2
principle [1] - 87:15
private [2] - 82:18
privately [1] - 90:1
privilege [11] - 88:15, 88:22, 88:25,
 90:2, 90:5, 90:6, 90:12, 90:18, 90:19,
 91:11
privileged [2] - 28:1, 91:8
privileges [2] - 58:13, 91:2

probable [1] - 54:16
problem [20] - 6:16, 14:19, 15:25, 25:23,
 34:7, 35:17, 40:11, 43:13, 44:18,
 46:19, 49:6, 55:22, 58:20, 60:8, 72:2,
 80:19, 82:11, 82:15, 87:9, 87:15
problematic [1] - 29:17
problems [2] - 43:14, 44:4
procedural [1] - 89:23
proceeding [1] - 45:4
Proceedings [1] - 3:13
process [23] - 5:15, 5:23, 6:6, 6:19,
 10:19, 33:3, 38:13, 38:18, 43:21, 44:8,
 44:24, 44:25, 47:18, 51:15, 53:5, 56:5,
 71:2, 85:1, 85:4, 86:18, 91:12, 95:11,
 98:21
produce [16] - 14:9, 23:25, 31:8, 35:11,
 56:11, 56:17, 59:14, 59:17, 64:3, 65:8,
 67:1, 77:17, 77:20, 80:14, 96:20,
 101:12
produced [43] - 3:13, 8:22, 14:9, 14:20,
 14:21, 18:14, 21:24, 22:5, 22:14,
 25:22, 25:23, 31:8, 31:12, 31:15, 32:3,
 39:3, 39:17, 42:24, 56:11, 56:17,
 58:18, 58:19, 58:24, 59:2, 60:3, 75:23,
 76:1, 76:7, 76:13, 77:7, 77:8, 77:12,
 79:12, 79:13, 79:23, 94:4, 98:12,
 101:1, 101:6
producing [5] - 18:12, 25:23, 59:8,
 80:19, 101:25
product [1] - 17:19
production [11] - 9:17, 31:17, 39:10,
 45:5, 64:5, 66:8, 94:12, 94:15, 94:18,
 94:23, 95:5
program [1] - 26:13
proof [2] - 7:3, 15:8
proper [1] - 21:6
proportional [1] - 74:22
proportionality [4] - 60:9, 60:10, 72:15,
 83:4
proportionate [6] - 81:8, 95:7, 97:16,
 98:2, 98:16, 98:20
proposal [6] - 38:18, 39:13, 43:8, 43:11,
 45:4, 45:12
proposing [1] - 19:12
protect [2] - 11:8, 100:4
protected [1] - 58:12
protections [1] - 100:3
protective [10] - 82:17, 84:7, 84:14,
 84:17, 84:18, 84:22, 85:13, 85:15,
 86:19, 87:17
proven [1] - 69:21
provide [6] - 59:3, 77:5, 77:6, 90:19,
 94:3, 100:25
provided [10] - 20:14, 35:4, 38:24,
 58:10, 73:14, 74:4, 74:7, 76:4, 78:4,
 86:20
provides [1] - 6:24
providing [1] - 43:11
proving [3] - 7:15, 15:3, 72:10
proximity [1] - 47:21

<p>prudent ^[1] - 89:12</p> <p>PSU ^[5] - 10:16, 18:17, 20:13, 46:9, 93:24</p> <p>public ^[18] - 53:20, 59:22, 60:1, 60:7, 66:25, 67:11, 68:19, 68:24, 69:1, 69:7, 73:10, 74:18, 78:3, 79:9, 95:25, 99:18</p> <p>publication ^[1] - 92:8</p> <p>publicized ^[1] - 99:18</p> <p>publicly ^[10] - 19:17, 27:3, 73:8, 75:12, 75:13, 76:6, 77:23, 77:25, 87:18, 88:7</p> <p>published ^[1] - 31:17</p> <p>pudding ^[1] - 15:8</p> <p>pulled ^[1] - 78:23</p> <p>purported ^[1] - 76:20</p> <p>purportedly ^[1] - 75:10</p> <p>purpose ^[1] - 21:6</p> <p>purposes ^[2] - 67:14, 92:19</p> <p>pursuant ^[1] - 59:14</p> <p>pursue ^[2] - 43:1, 43:2</p> <p>push ^[1] - 18:19</p> <p>pushed ^[1] - 21:8</p> <p>put ^[12] - 20:11, 30:5, 32:1, 32:4, 33:7, 34:10, 37:1, 57:18, 61:13, 65:16, 72:18, 103:11</p> <p>putting ^[2] - 33:2, 47:18</p>	<p>re-traumatized ^[2] - 34:5, 60:23</p> <p>reach ^[1] - 90:9</p> <p>reached ^[3] - 15:2, 35:7</p> <p>reaching ^[3] - 22:6, 22:9, 96:1</p> <p>read ^[1] - 50:17</p> <p>ready ^[1] - 18:9</p> <p>reality ^[3] - 18:6, 19:2, 29:18</p> <p>really ^[23] - 16:18, 28:21, 34:9, 43:15, 43:18, 43:25, 44:22, 51:2, 51:14, 53:3, 68:1, 70:6, 72:13, 77:4, 81:1, 81:15, 83:16, 86:16, 88:16, 95:18, 97:2, 102:22, 103:8</p> <p>reason ^[16] - 21:10, 23:17, 28:13, 28:19, 31:25, 41:2, 46:12, 56:14, 63:22, 64:2, 68:18, 76:20, 77:21, 91:25, 102:4, 102:5</p> <p>reasonable ^[7] - 25:2, 27:8, 72:17, 83:3, 85:17, 91:16, 101:16</p> <p>reasonably ^[1] - 38:7</p> <p>reasons ^[11] - 23:11, 26:4, 35:20, 40:8, 60:6, 61:10, 65:2, 67:3, 68:15, 69:11, 89:25</p> <p>receipt ^[1] - 86:19</p> <p>received ^[9] - 22:3, 25:7, 79:11, 83:14, 85:3, 88:2, 90:9, 94:25, 95:23</p> <p>receiving ^[1] - 103:18</p> <p>recent ^[1] - 13:22</p> <p>recently ^[2] - 5:20, 39:7</p> <p>recess ^[1] - 103:24</p> <p>recitation ^[2] - 100:21, 100:23</p> <p>reckoning ^[1] - 25:8</p> <p>recognize ^[3] - 36:14, 36:16, 57:11</p> <p>recollections ^[1] - 102:10</p> <p>recommended ^[1] - 23:23</p> <p>reconsideration ^[1] - 37:23</p> <p>reconvene ^[1] - 103:23</p> <p>record ^[14] - 4:9, 6:10, 6:24, 13:20, 16:18, 18:7, 21:1, 48:2, 53:20, 55:24, 57:19, 64:20, 66:25, 103:10</p> <p>recorded ^[1] - 3:13</p> <p>records ^[32] - 9:9, 14:23, 14:24, 21:2, 21:5, 21:12, 27:10, 27:12, 27:18, 34:22, 34:23, 35:12, 35:15, 35:19, 37:18, 37:20, 48:9, 59:19, 70:14, 70:15, 70:16, 97:24, 98:4, 98:8, 98:12, 98:13, 98:14, 98:15, 98:18</p> <p>recreate ^[3] - 6:8, 23:10, 23:12</p> <p>redacted ^[7] - 19:18, 20:1, 62:18, 62:23, 73:17, 78:5, 98:12</p> <p>redactions ^[8] - 62:19, 63:3, 82:11, 99:6, 99:10, 99:16, 99:17, 100:2</p> <p>reduplicate ^[1] - 23:15</p> <p>reference ^[3] - 31:7, 74:4, 86:3</p> <p>referenced ^[2] - 23:4, 27:1</p> <p>references ^[1] - 73:17</p> <p>referred ^[2] - 63:19, 78:12</p> <p>reforms ^[1] - 88:20</p> <p>refuses ^[1] - 8:17</p> <p>refusing ^[3] - 18:8, 20:8, 64:3</p> <p>regard ^[12] - 58:14, 78:25, 84:10, 84:25,</p>	<p>85:13, 85:24, 86:3, 86:14, 87:8, 87:11, 90:2, 92:18</p> <p>regarding ^[5] - 15:6, 52:20, 58:8, 80:16, 84:16</p> <p>regardless ^[2] - 55:12, 80:17</p> <p>rejected ^[2] - 18:24, 59:15</p> <p>relate ^[4] - 19:13, 70:1, 73:21, 73:23</p> <p>related ^[8] - 16:2, 75:10, 76:1, 76:8, 76:18, 76:19, 86:1, 90:15</p> <p>relating ^[2] - 42:21, 64:5</p> <p>relations ^[3] - 63:22, 64:7, 65:6</p> <p>relationship ^[7] - 28:6, 28:7, 68:13, 69:2, 69:5, 69:25, 81:20</p> <p>relatively ^[1] - 39:8</p> <p>release ^[8] - 13:23, 56:18, 58:7, 58:14, 62:17, 73:13, 74:3, 78:3</p> <p>released ^[2] - 19:18, 25:18</p> <p>releasing ^[1] - 99:2</p> <p>relevance ^[19] - 7:4, 11:23, 12:11, 12:24, 13:3, 16:23, 20:6, 22:20, 24:3, 26:21, 29:5, 32:19, 60:9, 67:13, 76:20, 77:21, 88:9, 89:9, 99:25</p> <p>relevant ^[34] - 11:22, 30:14, 32:23, 45:8, 49:3, 49:24, 60:7, 68:18, 69:6, 70:20, 70:24, 71:1, 72:10, 75:22, 76:17, 77:7, 77:18, 79:19, 79:20, 79:21, 81:23, 91:23, 92:23, 92:25, 94:3, 95:1, 95:7, 95:14, 97:16, 98:2, 98:5, 98:16, 98:19, 101:18</p> <p>reliance ^[2] - 10:9, 41:1</p> <p>relief ^[1] - 29:3</p> <p>remain ^[3] - 62:18, 100:2, 100:4</p> <p>remarks ^[1] - 75:1</p> <p>remember ^[3] - 20:5, 36:16, 64:17</p> <p>reminded ^[1] - 82:13</p> <p>removed ^[1] - 28:11</p> <p>removes ^[1] - 41:1</p> <p>removing ^[1] - 99:10</p> <p>renege ^[1] - 97:3</p> <p>reneging ^[1] - 101:10</p> <p>renegotiated ^[2] - 39:16, 84:15</p> <p>repeat ^[1] - 56:10</p> <p>repeated ^[3] - 8:5, 25:1, 25:20</p> <p>repeatedly ^[6] - 7:9, 23:19, 24:22, 79:16, 94:17, 101:17</p> <p>reply ^[2] - 43:17, 100:22</p> <p>report ^[37] - 7:10, 7:18, 22:22, 22:25, 23:7, 23:10, 23:12, 29:6, 29:7, 29:12, 29:13, 29:17, 29:24, 31:3, 37:10, 37:11, 38:8, 49:16, 49:23, 50:2, 50:17, 51:12, 52:21, 52:22, 53:8, 53:17, 53:25, 54:4, 74:3, 76:15, 79:3, 95:23, 95:24, 96:9</p> <p>Reporter ^[2] - 3:9, 3:10</p> <p>reports ^[3] - 6:25, 10:8, 12:16</p> <p>repose ^[1] - 61:13</p> <p>represent ^[12] - 4:19, 5:3, 39:24, 57:5, 72:24, 77:10, 78:19, 83:20, 87:25, 93:18, 99:11, 99:12</p> <p>representation ^[1] - 22:10</p>
Q		
<p>quagmire ^[1] - 5:21</p> <p>quash ^[9] - 12:24, 62:5, 89:7, 89:14, 96:13, 96:16, 96:17, 96:19, 97:15</p> <p>quashed ^[1] - 98:24</p> <p>questioned ^[2] - 19:3, 19:15</p> <p>questioning ^[1] - 29:15</p> <p>questions ^[16] - 29:21, 34:14, 51:2, 53:1, 56:19, 58:3, 61:4, 62:4, 74:23, 77:16, 82:10, 83:24, 84:10, 87:2, 87:3, 89:6</p> <p>quickly ^[1] - 45:6</p> <p>quite ^[7] - 7:25, 23:9, 25:24, 33:25, 44:24, 53:23, 103:19</p> <p>quote ^[1] - 82:22</p> <p>quote/unquote ^[1] - 65:6</p> <p>QUZACK ^[1] - 2:16</p> <p>Quzack ^[1] - 4:15</p>		
R		
<p>rabbit ^[2] - 69:22, 70:11</p> <p>rails ^[2] - 102:14, 102:15</p> <p>raise ^[1] - 68:11</p> <p>raised ^[2] - 61:4, 84:2</p> <p>ramifications ^[1] - 5:24</p> <p>rare ^[2] - 32:17, 34:16</p> <p>rarely ^[1] - 26:7</p> <p>re ^[7] - 22:18, 22:23, 34:5, 47:19, 48:6, 60:23, 69:22</p> <p>re-litigate ^[2] - 22:23, 69:22</p> <p>re-reviewed ^[1] - 22:18</p> <p>re-traumatize ^[1] - 47:19</p>		

<p>representations [1] - 102:25 represented [2] - 10:7, 32:21 request [4] - 13:13, 17:5, 37:17, 59:9 requests [8] - 7:7, 40:4, 42:19, 59:15, 79:18, 80:22, 85:3, 86:7 require [2] - 8:3, 43:22 requirement [1] - 41:11 requiring [1] - 89:22 resigned [2] - 28:14, 60:14 resolution [1] - 65:15 resolve [7] - 10:3, 10:19, 40:20, 40:25, 43:13, 65:17, 84:6 resolved [7] - 9:16, 9:17, 9:22, 10:2, 44:3, 84:4, 89:13 resources [2] - 79:7, 95:11 respect [34] - 14:5, 20:7, 20:10, 21:21, 23:7, 23:8, 26:22, 27:15, 27:21, 30:24, 34:8, 37:10, 38:19, 46:12, 48:22, 51:21, 62:6, 63:16, 64:19, 65:10, 68:12, 70:3, 79:17, 82:10, 82:11, 82:19, 88:9, 88:13, 88:15, 89:1, 89:3, 100:20, 101:2, 101:9 respectfully [1] - 8:15 respecting [1] - 16:15 respond [3] - 43:16, 88:23, 100:7 responded [1] - 96:10 responding [1] - 38:6 response [5] - 42:24, 45:17, 57:25, 58:5, 86:10 responses [1] - 42:8 responsibilities [1] - 8:23 responsive [6] - 21:25, 22:19, 30:11, 30:15, 42:20, 101:19 rest [1] - 61:12 rests [1] - 6:16 result [1] - 29:15 retaliating [1] - 45:19 retaliation [2] - 24:6, 45:20 retraumatized [1] - 74:11 retraumatizes [1] - 74:22 review [6] - 77:20, 78:7, 87:12, 89:5, 91:2, 91:11 reviewed [1] - 22:18 revisit [1] - 101:13 revisiting [1] - 52:25 rich [1] - 33:1 Richard [5] - 2:12, 5:3, 41:9, 42:6, 42:21 right-hand [1] - 12:1 ripe [2] - 36:17, 65:25 rise [1] - 4:1 risk [2] - 40:22, 40:23 Rita [1] - 4:17 RITA [1] - 2:3 Road [1] - 2:8 rock [2] - 47:5, 67:17 Rockefeller [1] - 3:2 role [4] - 27:9, 86:16, 86:17, 86:23 romantic [1] - 99:22 RPR [1] - 3:9</p>	<p>Rule [11] - 7:14, 10:8, 10:22, 12:2, 12:3, 13:7, 49:18, 51:8, 60:9, 70:24 rule [6] - 16:8, 16:11, 52:3, 54:20, 55:23 ruled [1] - 97:14 rules [7] - 6:23, 37:2, 43:18, 43:22, 43:25, 89:15, 90:1 ruling [2] - 87:6, 96:16 rulings [5] - 40:22, 40:24, 52:25, 84:12, 85:12 run [1] - 93:10</p> <p style="text-align: center;">S</p> <p>S.D.N.Y [1] - 83:25 sad [1] - 96:1 sadly [1] - 5:21 Salzman [3] - 57:14, 93:15, 103:17 SALZMAN [3] - 3:4, 57:14, 93:17 sat [3] - 41:14, 45:24, 73:15 satisfaction [1] - 58:25 save [1] - 91:19 saw [3] - 28:24, 42:13, 64:12 scenario [1] - 81:14 scheduled [3] - 15:24, 18:10, 38:5 SCHNELL [1] - 3:5 school [1] - 14:24 scope [11] - 11:6, 13:14, 14:5, 19:2, 44:12, 47:2, 48:23, 53:8, 54:19, 65:16, 97:1 screaming [1] - 61:12 se [2] - 51:22, 52:1 search [2] - 76:4, 76:11 seated [1] - 4:3 Second [2] - 7:19, 51:21 second [5] - 21:11, 37:5, 49:25, 68:18, 99:20 secondly [1] - 101:9 secretary [1] - 11:2 see [18] - 5:9, 6:16, 16:19, 47:5, 49:10, 53:11, 56:6, 56:14, 56:24, 62:11, 65:20, 68:5, 79:25, 80:12, 81:12, 81:23, 87:10, 89:13 seek [5] - 10:19, 13:13, 65:13, 67:25, 89:14 seeking [13] - 7:1, 49:15, 50:22, 51:13, 53:24, 58:12, 66:18, 71:7, 80:11, 81:21, 91:5, 91:16, 100:17 seeks [2] - 6:4, 9:7 seem [2] - 53:13, 56:24 self [1] - 69:3 self-deleting [1] - 69:3 senator [5] - 88:1, 88:14, 88:16, 89:1, 93:6 sense [3] - 62:12, 85:18, 85:21 sensible [4] - 15:10, 16:5, 35:16, 37:3 sensitive [3] - 89:21, 99:14, 99:25 sensitivity [2] - 84:12, 85:11 sent [4] - 46:1, 46:5, 69:3, 80:11 separate [3] - 58:13, 67:5, 88:3</p>	<p>separately [1] - 84:6 September [2] - 1:7, 18:23 series [3] - 22:9, 27:23, 28:18 serious [2] - 27:2, 27:5 served [6] - 30:21, 73:4, 74:9, 74:10, 85:2, 85:5 service [1] - 73:10 services [1] - 90:14 set [4] - 40:6, 70:9, 87:7, 99:15 setting [1] - 11:24 settlement [1] - 43:5 seven [2] - 28:9, 82:23 several [5] - 29:9, 29:16, 30:23, 63:25, 69:10 sexual [27] - 9:8, 13:13, 26:6, 28:7, 28:22, 30:25, 41:3, 41:16, 41:23, 42:7, 42:14, 45:22, 46:7, 51:6, 52:6, 55:17, 59:18, 59:25, 61:5, 64:20, 67:2, 69:2, 69:25, 75:11, 79:2, 88:6, 99:24 sexually [5] - 24:22, 26:5, 27:4, 27:24, 65:1 shamed [1] - 87:18 shared [1] - 75:24 shedding [1] - 60:5 SHER [1] - 2:5 Sher [1] - 4:22 shirked [2] - 8:23, 22:17 shit [1] - 69:5 shit-follower [1] - 69:5 shock [1] - 28:17 short [1] - 103:20 show [3] - 11:15, 49:5, 53:21 showing [2] - 76:13, 80:5 side [3] - 10:13, 26:14, 32:4 sides [3] - 60:25, 65:21, 85:4 sideshow [1] - 65:5 sigh [1] - 29:3 sign [1] - 27:25 signatory [1] - 17:18 signed [1] - 68:23 significant [2] - 6:14, 34:14 similar [6] - 15:1, 17:15, 32:24, 38:13, 38:15, 42:17 similarly [2] - 48:8, 87:11 simple [1] - 18:3 simply [3] - 18:15, 22:11, 79:20 sincere [1] - 32:12 single [15] - 6:7, 22:3, 35:24, 47:5, 48:24, 70:12, 78:21, 79:5, 82:7, 83:2, 83:5, 94:7, 94:21, 98:3, 98:19 sit [9] - 9:4, 9:5, 18:9, 18:10, 19:1, 19:3, 19:15, 20:8, 24:1 sitting [4] - 18:3, 57:4, 57:22, 102:11 situated [1] - 91:4 situation [3] - 5:21, 10:17, 76:25 six [2] - 24:17, 28:9 slept [2] - 9:8, 28:21 slights [1] - 8:4 slow [1] - 91:12</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

small [3] - 44:2, 79:5, 91:1
smiling [1] - 80:6
smoothly [1] - 85:10
solution [9] - 14:2, 14:8, 14:19, 15:1, 15:10, 16:5, 35:17, 37:3, 46:20
solutions [3] - 34:1, 38:11, 102:14
someone [2] - 9:8, 60:12
sometimes [1] - 43:17
somewhat [2] - 21:13, 25:9
son [2] - 20:21, 20:23
soon [3] - 17:11, 25:17, 80:7
soon-to-be [1] - 80:7
sorry [5] - 12:17, 27:13, 36:3, 39:25, 102:17
sort [12] - 11:5, 11:25, 14:15, 44:7, 53:13, 56:3, 62:13, 66:21, 84:4, 89:18, 98:25
sought [5] - 45:7, 70:15, 79:15, 79:25, 81:15
source [1] - 53:21
sources [1] - 33:1
Southern [6] - 27:17, 39:20, 83:20, 84:5, 86:9, 86:12
speaking [5] - 7:10, 17:21, 80:4, 86:22, 87:13
specific [14] - 9:25, 14:11, 14:22, 16:2, 20:1, 46:9, 59:11, 62:20, 63:3, 82:10, 83:9, 94:14, 95:6
specifically [6] - 7:11, 8:11, 45:8, 59:8, 79:17, 86:1
specificity [2] - 96:23, 97:10
spell [1] - 57:7
spend [1] - 26:10
spoken [1] - 81:25
staffers [2] - 20:2, 26:3
stake [3] - 5:16, 5:23, 56:8
stance [1] - 45:3
stand [1] - 16:24
standalone [1] - 73:24
standing [1] - 63:1
stands [1] - 63:5
starkly [1] - 102:9
start [7] - 58:2, 68:6, 83:14, 95:5, 101:12, 101:21, 103:21
started [4] - 13:20, 17:24, 36:15, 40:3
starting [1] - 4:9
starts [1] - 74:15
STATE [1] - 1:8
State [21] - 2:8, 2:18, 4:6, 5:6, 6:1, 10:16, 11:1, 11:4, 18:22, 21:9, 26:12, 28:10, 43:7, 45:1, 45:9, 50:1, 57:2, 68:14, 72:24, 75:7, 84:9
state [8] - 4:8, 21:13, 73:4, 88:1, 88:16, 90:7, 93:6, 99:10
statement [8] - 7:15, 43:22, 53:20, 61:14, 64:24, 67:20, 68:24, 69:1
statements [3] - 28:1, 59:23, 60:1
STATES [2] - 1:1, 1:21
States [1] - 1:6

status [4] - 4:5, 39:21, 39:22, 85:13
STATUS [1] - 1:20
stay [1] - 38:2
stenography [1] - 3:13
step [1] - 9:15
Steph [1] - 64:9
Stephanie [1] - 63:24
Stern [1] - 5:2
still [7] - 14:7, 43:19, 51:25, 52:10, 62:18, 72:9, 103:3
stop [6] - 6:23, 7:12, 13:18, 48:8, 65:12, 65:18
stopped [1] - 36:16
Story [1] - 31:18
story [2] - 26:8, 46:8
stranger [1] - 81:4
strategic [1] - 48:6
strategically [1] - 33:8
strategy [5] - 6:13, 8:11, 34:7, 34:9, 56:3
streamline [1] - 26:21
Street [6] - 2:2, 2:5, 2:15, 2:18, 2:21, 25:19
strenuously [1] - 66:11
stressing [1] - 91:15
strike [2] - 25:13, 44:16
strip [1] - 68:21
strongly [2] - 19:10, 86:15
struggling [1] - 44:11
stuck [3] - 26:21, 26:22, 29:1
stuff [4] - 40:10, 47:20, 48:7, 101:14
subject [11] - 14:6, 36:13, 51:25, 57:21, 65:8, 78:6, 82:16, 87:16, 89:10, 98:24
subjected [1] - 83:2
subpoena [32] - 9:8, 12:19, 12:21, 21:15, 23:20, 23:21, 25:7, 25:17, 25:19, 27:17, 30:18, 30:20, 30:21, 30:22, 31:15, 63:14, 63:19, 63:21, 64:18, 65:7, 74:9, 75:22, 76:17, 76:21, 88:2, 88:10, 88:23, 91:5, 95:13, 97:1, 98:17, 98:23
subpoenaed [21] - 12:15, 17:4, 21:4, 31:4, 32:4, 34:21, 37:12, 37:18, 37:21, 40:8, 60:17, 63:22, 64:2, 64:11, 64:13, 64:15, 75:9, 77:19, 94:2, 94:10, 97:23
subpoenaing [4] - 14:23, 20:17, 48:9, 67:25
subpoenas [24] - 9:12, 9:13, 12:9, 13:6, 21:6, 26:23, 26:24, 27:6, 34:25, 42:8, 42:10, 42:25, 45:7, 45:11, 58:5, 61:16, 63:16, 63:18, 65:11, 74:11, 79:11, 83:13, 102:21
substantive [2] - 81:2, 81:7
sudden [1] - 74:15
suddenly [1] - 97:9
sue [1] - 93:20
sued [4] - 27:6, 27:16, 61:15, 73:19
suffered [1] - 11:15
suffering [2] - 41:6, 41:7

sufficient [1] - 42:2
sufficiently [1] - 10:22
suggest [2] - 15:1, 41:15
suggested [2] - 38:13, 95:5
suggestion [7] - 17:15, 38:21, 38:22, 56:22, 59:1, 60:21, 70:9
sui [1] - 15:19
suit [1] - 73:20
Suite [1] - 3:5
summarily [1] - 18:24
summer [1] - 80:4
sun [1] - 48:10
superior [1] - 68:13
supervisor [1] - 49:2
support [4] - 75:10, 75:13, 76:3, 80:1
supporter [1] - 77:23
suppose [3] - 15:9, 45:4, 62:10
supposed [3] - 55:6, 55:14, 94:20
surely [1] - 85:17
surprised [2] - 32:21, 36:20
surrounding [1] - 75:19
suspect [1] - 19:10
swath [2] - 6:4, 34:25
swathes [2] - 19:22, 19:25
sworn [1] - 54:1

T

table [5] - 17:14, 38:18, 53:13, 86:21, 87:7
talks [2] - 20:17, 26:23
tangentially [1] - 77:6
TARYN [1] - 1:21
tee [1] - 100:8
teed [1] - 49:22
telephone [1] - 20:19
temporal [1] - 47:20
ten [2] - 10:20, 24:14
tendered [2] - 85:3, 85:14
tenor [1] - 34:2
tenth [1] - 24:13
terms [10] - 32:13, 55:19, 75:11, 79:25, 91:4, 91:16, 92:17, 97:18, 99:2, 99:5
terrain [1] - 51:15
terribly [1] - 102:6
test [3] - 24:4, 52:1, 52:23
testified [6] - 25:25, 46:14, 49:9, 55:10, 74:2, 79:8
testifies [2] - 31:11, 31:12
testify [4] - 20:16, 43:5, 46:13, 76:24
testifying [1] - 44:23
testimonies [1] - 48:2
testimony [22] - 15:20, 16:6, 20:12, 20:14, 24:20, 24:22, 25:17, 25:24, 34:25, 46:16, 54:1, 54:5, 55:9, 55:11, 73:7, 74:18, 75:10, 83:2, 83:8, 87:9, 103:2, 103:4
tests [1] - 68:1
text [10] - 20:14, 22:3, 22:5, 22:9, 25:20,

<p>31:9, 69:3, 80:11, 95:23, 96:12 texted [1] - 31:13 texting [1] - 25:18 texts [11] - 25:20, 31:14, 31:19, 31:23, 35:3, 35:4, 76:2, 79:24, 80:13, 80:16, 81:9 THE [144] - 1:21, 4:1, 4:2, 4:4, 5:7, 10:5, 11:12, 11:23, 12:11, 12:15, 12:23, 13:2, 13:5, 13:8, 15:1, 15:7, 15:12, 15:17, 15:21, 15:23, 16:9, 16:13, 17:2, 17:6, 17:12, 19:19, 20:20, 20:24, 23:14, 24:24, 27:10, 27:13, 32:8, 32:11, 33:5, 33:10, 33:14, 33:23, 34:5, 34:13, 34:24, 35:2, 35:5, 35:22, 36:3, 36:14, 37:20, 37:24, 38:1, 38:4, 38:11, 38:21, 39:19, 39:25, 40:2, 40:15, 40:20, 43:3, 43:6, 43:12, 45:14, 46:21, 46:24, 47:7, 47:14, 49:13, 49:15, 49:18, 49:20, 50:3, 50:6, 50:9, 50:12, 50:17, 50:20, 51:1, 51:11, 51:18, 51:24, 52:2, 52:6, 52:10, 52:13, 52:16, 52:19, 53:11, 53:19, 54:3, 54:8, 54:10, 54:24, 55:7, 55:22, 56:16, 57:7, 57:9, 57:16, 57:18, 59:3, 59:22, 60:5, 62:13, 63:12, 63:15, 63:18, 64:15, 64:22, 65:3, 65:19, 66:3, 66:6, 66:16, 67:8, 68:3, 68:8, 69:18, 70:2, 71:4, 72:21, 74:25, 78:15, 78:17, 83:18, 83:23, 86:25, 87:3, 87:21, 87:23, 89:16, 90:21, 90:23, 91:21, 92:15, 93:11, 93:14, 100:11, 100:14, 100:19, 101:3, 101:6, 102:4, 102:9, 102:18, 103:16 theory [8] - 10:9, 11:23, 12:11, 12:24, 13:3, 41:18, 66:24, 80:10 Theresa [1] - 4:21 THERESA [1] - 2:6 they've [6] - 34:19, 47:5, 49:9, 65:13, 80:24, 97:12 thinking [1] - 95:4 third [25] - 13:6, 21:21, 32:17, 36:5, 38:16, 38:23, 41:18, 42:12, 42:19, 42:25, 43:2, 44:19, 47:17, 56:6, 56:16, 56:20, 57:13, 58:4, 62:13, 66:21, 68:1, 88:5, 89:19, 89:22, 102:23 third-parties [18] - 32:17, 36:5, 38:16, 38:23, 41:18, 42:12, 42:19, 42:25, 44:19, 47:17, 56:6, 56:16, 56:20, 57:13, 58:4, 68:1, 89:19, 89:22 third-party [4] - 13:6, 43:2, 66:21, 88:5 thirty [4] - 75:8, 75:16, 76:7, 78:1 THOMAS [1] - 2:19 thousands [4] - 21:24, 22:15, 79:24, 81:9 threat [1] - 69:14 threatened [4] - 13:23, 69:8, 69:9, 70:3 threatening [1] - 69:6 three [21] - 5:17, 9:2, 9:3, 16:4, 18:7, 21:23, 22:9, 24:17, 26:2, 27:7, 28:3, 30:3, 31:23, 58:3, 58:7, 68:14, 68:21, 76:21, 94:2, 97:24, 98:18</p>	<p>three-and-a-half [2] - 97:24, 98:18 throats [1] - 33:20 throughout [2] - 22:12, 101:16 throw [1] - 51:9 Thursday [1] - 84:16 ti's [1] - 79:20 tier [1] - 62:14 time-back [1] - 7:7 timing [3] - 36:4, 36:6, 36:9 Tish [1] - 54:22 today [14] - 5:13, 12:6, 15:24, 17:24, 32:12, 36:4, 36:11, 39:22, 57:21, 58:1, 59:16, 64:22, 65:20, 94:14 together [1] - 45:24 took [6] - 5:10, 8:6, 17:16, 20:12, 24:19, 81:21 tooth [1] - 70:12 top [2] - 83:6, 83:11 totality [1] - 32:18 touch [7] - 21:1, 25:1, 25:3, 25:19, 26:7, 34:14, 37:11 touched [1] - 75:15 touching [1] - 38:4 toward [1] - 77:24 trace [1] - 46:2 transcript [7] - 58:9, 62:16, 62:17, 62:22, 62:24, 73:13, 99:5 TRANSCRIPT [1] - 1:20 Transcript [1] - 3:13 Transcription [1] - 3:13 transcripts [2] - 19:17, 87:4 trauma [1] - 34:6 traumatize [1] - 47:19 traumatized [2] - 34:5, 60:23 traumatizing [1] - 73:9 treat [1] - 11:6 treated [3] - 11:15, 14:14, 37:8 treats [1] - 11:13 TREMONTE [1] - 2:5 Tremonte [1] - 4:22 trial [8] - 8:7, 29:8, 32:14, 44:17, 53:6, 54:24, 55:1, 77:1 tried [11] - 10:1, 10:2, 16:3, 28:15, 67:6, 77:5, 77:6, 79:10, 79:15, 96:25, 101:16 trolling [1] - 96:4 TROOPER [1] - 1:4 Trooper [75] - 1:24, 4:5, 4:11, 4:13, 6:17, 7:1, 7:3, 7:8, 8:1, 8:3, 8:7, 8:18, 8:19, 8:22, 9:10, 10:14, 11:9, 17:1, 18:4, 19:13, 20:10, 20:12, 20:15, 20:16, 21:1, 21:11, 21:16, 21:19, 21:25, 22:3, 22:7, 22:11, 24:15, 24:17, 34:8, 34:24, 35:7, 35:13, 38:20, 41:8, 41:9, 45:19, 45:23, 46:6, 46:8, 48:15, 61:6, 70:1, 72:10, 72:14, 73:23, 73:24, 74:6, 74:19, 74:20, 75:17, 75:18, 75:20, 77:1, 82:5, 85:9, 85:19, 85:23, 85:24, 86:2, 86:17, 93:23, 93:24, 95:1, 95:8, 98:2</p>	<p>troopers [2] - 21:14, 24:18 true [11] - 15:7, 26:3, 26:12, 28:2, 38:8, 41:13, 50:21, 51:20, 59:22, 67:12, 81:13 truly [2] - 47:15, 98:13 trustworthiness [7] - 53:23, 53:25, 54:13, 54:18, 54:20, 55:3, 55:4 truth [1] - 65:22 try [6] - 16:16, 34:12, 44:6, 70:9, 91:10, 97:2 trying [26] - 9:22, 12:7, 12:8, 13:9, 17:20, 22:23, 23:10, 23:12, 23:13, 24:10, 32:1, 37:22, 43:13, 44:10, 46:17, 55:23, 56:2, 60:11, 64:22, 69:22, 71:1, 82:8, 85:4, 85:7, 86:18 TRZASKOMA [2] - 2:6, 4:21 Trzaskoma [5] - 4:22, 17:17, 24:8, 26:22, 52:19 turn [3] - 37:17, 71:1, 100:16 turned [1] - 94:7 turning [1] - 5:11 tweet [7] - 45:25, 46:5, 59:25, 60:7, 103:9, 103:10 tweets [2] - 27:23, 28:18 twice [1] - 28:5 Twitter [1] - 64:7 two [24] - 9:5, 13:15, 13:16, 14:13, 16:4, 19:5, 19:14, 20:11, 21:25, 24:18, 26:2, 27:7, 28:11, 31:23, 40:14, 46:6, 58:6, 74:10, 77:3, 80:23, 88:11, 94:9, 99:6, 101:4 two-and-a-half [1] - 94:9 twofold [1] - 46:4 tying [1] - 7:11 types [3] - 25:21, 79:18, 80:14 typically [1] - 54:13</p>
<p style="text-align: center;">U</p>		
<p>ultimate [1] - 62:4 ultimately [1] - 44:18 unable [1] - 76:5 uncertain [1] - 51:15 unclear [2] - 51:14, 79:25 uncomfortable [1] - 25:9 under [21] - 13:3, 43:18, 46:1, 47:4, 47:23, 48:10, 49:9, 49:18, 49:24, 50:3, 51:3, 51:8, 52:3, 60:9, 67:17, 67:18, 70:23, 70:24, 98:11, 100:6, 100:9 undergoes [1] - 15:3 underlying [1] - 52:24 underproduced [1] - 58:21 understood [5] - 15:22, 16:10, 20:20, 26:9, 38:22 unethical [1] - 29:14 unfair [1] - 8:2 unfortunately [1] - 44:25 UNITED [2] - 1:1, 1:21 United [1] - 1:6 universe [4] - 43:24, 44:13, 53:7, 60:10</p>		

<p>unless [3] - 38:9, 40:25, 100:5 unlike [2] - 75:5, 98:20 unreasonably [1] - 34:19 unredacted [9] - 19:22, 58:9, 62:16, 62:17, 73:13, 74:3, 78:4, 87:4, 87:8 untrue [1] - 37:11 up [18] - 16:24, 23:3, 29:12, 31:19, 33:25, 35:8, 37:22, 39:7, 44:2, 49:22, 61:21, 66:4, 69:8, 74:15, 93:9, 99:23, 100:8, 101:11 utility [1] - 11:17 utilized [1] - 85:18</p>	<p>wheel [1] - 102:23 whole [3] - 22:12, 23:11, 71:2 wholly [1] - 8:2 wide [3] - 6:4, 28:13, 44:12 widespread [1] - 6:8 Wigdor [4] - 4:11, 4:13, 103:11, 103:12 WIGDOR [1] - 1:23 willing [13] - 16:13, 18:9, 32:13, 48:7, 58:6, 59:3, 59:13, 62:25, 63:4, 66:9, 67:1, 77:17, 83:6 wind [1] - 65:10 window [1] - 51:9 wink [1] - 55:15 wish [1] - 29:4 witness [13] - 16:3, 47:5, 48:21, 53:16, 65:22, 66:21, 69:8, 70:3, 70:12, 77:2, 83:8, 92:14, 102:11 witness' [2] - 9:9, 62:19 witnessed [1] - 69:9 witnesses [22] - 7:14, 13:11, 13:19, 14:15, 14:20, 16:2, 20:2, 33:7, 44:17, 49:8, 53:8, 54:2, 56:11, 56:13, 77:1, 78:8, 78:10, 78:12, 85:25, 88:5, 99:9, 100:24 woman [6] - 11:1, 11:13, 37:8, 55:13, 63:23, 63:24 women [18] - 8:6, 11:6, 11:14, 11:15, 17:1, 19:4, 19:16, 23:20, 24:21, 55:16, 61:11, 75:10, 75:13, 77:3, 77:24, 78:25, 88:17 wonderful [1] - 12:20 wondering [1] - 34:15 word [3] - 13:25, 17:9, 74:11 words [5] - 35:14, 50:25, 76:2, 76:8, 95:15 workable [1] - 15:3 workplace [6] - 61:6, 72:12, 75:8, 88:18, 88:20, 88:21 works [4] - 11:1, 11:2, 11:3, 11:10 world [7] - 27:3, 27:22, 27:23, 28:23, 29:24, 42:22, 49:2 worried [1] - 63:7 worthless [1] - 39:8 writes [1] - 31:23 writing [1] - 97:25 written [2] - 79:2, 88:23 wrote [3] - 76:19, 97:5, 97:6</p>	<p>yourselves [1] - 91:19</p>
V		
<p>VALDI [1] - 1:25 Valdi [1] - 4:10 various [2] - 52:24, 102:25 veracity [1] - 24:4 Verizon [1] - 97:23 versus [2] - 4:5, 4:6 viable [1] - 34:9 victim [3] - 11:19, 64:20, 73:21 victim's [1] - 48:2 victimize [1] - 44:10 victims [10] - 7:17, 7:22, 7:25, 8:9, 46:15, 60:22, 62:1, 66:18, 73:21, 74:20 view [6] - 26:5, 62:23, 82:5, 84:2, 98:23, 99:13 Virginia [2] - 78:19, 80:1 virtually [1] - 8:16 Vladeck [1] - 37:12 voluminous [2] - 21:13, 66:25 volunteer [1] - 91:9 voted [1] - 88:19</p>		
W		
<p>W-A-N-G [1] - 57:8 wait [3] - 36:1, 69:4, 89:12 waiting [3] - 36:11, 42:1, 56:7 waiving [1] - 90:1 walk [1] - 66:9 Wall [1] - 25:19 WANG [3] - 57:5, 57:8, 78:18 Wang [2] - 78:17, 95:22 wants [16] - 23:25, 24:1, 29:2, 35:23, 41:25, 42:5, 54:24, 56:2, 61:23, 73:1, 73:11, 73:12, 74:3, 82:2, 91:13, 97:21 Washington [1] - 75:14 watched [1] - 27:4 website [1] - 79:9 week [3] - 27:23, 37:11, 86:22 weekend [1] - 5:19 weeks [6] - 21:4, 21:12, 30:4, 31:19, 31:23, 43:19 welcome [3] - 38:1, 49:5, 62:1 West [2] - 2:2, 2:21 whatsoever [3] - 86:5, 86:17, 86:23</p>		
Y		
<p>year [2] - 13:22, 93:21 years [10] - 19:5, 27:4, 74:14, 75:8, 75:16, 78:1, 94:2, 94:9, 97:24, 98:18 yell [2] - 59:5, 88:12 yelled [2] - 30:6, 85:6 YORK [2] - 1:1, 1:8 York [28] - 1:6, 1:24, 2:2, 2:6, 2:8, 2:9, 2:12, 2:15, 2:18, 2:21, 2:24, 3:3, 3:6, 3:11, 4:5, 5:5, 10:16, 43:7, 45:1, 45:9 yourself [2] - 17:16, 23:22</p>		
Z		
		<p>zealous [2] - 47:11 zealously [2] - 34:12, 47:8 Zemsky [6] - 28:7, 68:22, 68:23, 69:3, 69:14, 69:25 ZOE [1] - 3:4 Zoe [1] - 57:14 Zoom [3] - 82:24, 83:7, 83:8</p>